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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS–FV–14–0027; FV14–985–3 FIR]

Spearmint Oil Produced in the Far West; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that decreased the assessment rate established for the Spearmint Oil Administrative Committee (Committee) for the 2014–2015 and subsequent marketing years from $0.10 to $0.09 per pound of spearmint oil handled. The Committee locally administers the marketing order which regulates the handling of spearmint oil produced in the Far West. The interim rule was necessary to allow the Committee to reduce its financial reserve while still providing adequate funding to meet program expenses.

DATES: Effective July 28, 2014.

FOR FURTHER INFORMATION CONTACT: Manuel Michel or Gary D. Olson, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Manuel.Michel@ams.usda.gov* or *GaryD.Olson@ams.usda.gov*.

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/AMSv1.0/MarketingOrdersSmallBusinessGuide*; or by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil grown in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

Under the order, Far West spearmint oil handlers are subject to assessments, which provide funds to administer the order. Assessment rates issued under the order are intended to be applicable to all assessable Far West spearmint oil for the entire fiscal period and continue indefinitely until amended, suspended, or terminated. The Committee's fiscal period begins on June 1, and ends on May 31.

In an interim rule published in the **Federal Register** on April 22, 2014, and effective on April 23, 2014, (79 FR 22359, Doc. No. AMS–FV–14–0027, FV11–985–3 IR), § 985.141 was amended by decreasing the assessment rate established for Far West spearmint oil for the 2014–2015 and subsequent marketing years from $0.10 to $0.09 per pound. The decrease in the per pound assessment rate allows the Committee to reduce its financial reserve while still providing adequate funding to meet program expenses.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are eight spearmint oil handlers subject to regulation under the order. In addition, there are approximately 39 producers of Scotch spearmint oil and approximately 91 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

Based on the SBA's definition of small entities, the Committee estimates that two of the eight handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 22 of the 39 Scotch spearmint oil producers, and 29 of the 91 Native spearmint oil producers, could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for purposes of weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, a majority of spearmint oil-producing farms fall into the SBA category of large businesses.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2014–2015 and subsequent marketing years from $0.10 to $0.09 per pound of spearmint oil handled. The Committee unanimously recommended 2014–2015 expenditures of $266,400 and an assessment rate of $0.09. The assessment rate of $0.09 is $0.01 lower than the rate previously in effect. The quantity of assessable spearmint oil for the 2014–15 marketing year is estimated at 2,500,000 pounds. Thus, the $0.09 rate should provide $225,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's monetary reserve will be adequate to cover the budgeted expenses. This action will allow the Committee to reduce its financial reserve while still providing adequate funding to meet program expenses.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers.

Additionally, the Committee's meeting was widely publicized throughout the Far West spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the February 19, 2014, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. No changes in those requirements as a result of this action are anticipated. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Far West spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Comments on the interim rule were required to be received on or before June 23, 2014. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: *http://www.regulations.gov/#!documentDetail;D=AMS-FV-14-0027-0001*.

This action also affirms information contained in the interim rule concerning Executive Orders 12866, 13563, 12988, and 13175; the Paperwork Reduction Act (44 U.S.C. Chapter 35); and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (79 FR 22359, April 22, 2014) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ Accordingly, the interim rule amending 7 CFR part 985, which was published at 79 FR 22359 on April 22, 2014, is adopted as a final rule, without change.

Dated: July 21, 2014.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2014–17505 Filed 7–24–14; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

Truth in Lending (Regulation Z)

CFR Correction

In Title 12 of the Code of Federal Regulations, Parts 220 to 229, revised as of January 1, 2014, on page 381, in § 226.9, at the end of paragraph (c)(2)(v)(D), add the words ''such an arrangement, provided that:''.

[FR Doc. 2014–17619 Filed 7–24–14; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2014–0067; Special Conditions No. 25–556–SC]

Special Conditions: Learjet Inc., Model LJ–200–1A10 Airplane; Composite Fuselage In-Flight Fire/Flammability Resistance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Learjet Inc. Model LJ–200–1A10 airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The fuselage of the Model LJ–200–1A10 will be made of composite materials rather than conventional aluminum, which may affect fire propagation during an in-flight fire. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* August 25, 2014.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone 425–227–2195; facsimile 425–227–1232.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 2009, Learjet Inc. applied for a type certificate for their new Model LJ–200–1A10 airplane (hereafter referred to as the ''Model LJ–200''). The Model LJ–200 is a business class airplane powered by two high-bypass turbine engines with an estimated maximum takeoff weight of 35,550 pounds and an interior configuration for up to 10 passengers.

The Model LJ–200 is the first composite fuselage airplane design manufactured by Learjet Inc. A fuselage manufactured from composite material is considered a novel or unusual design with respect to existing regulations for this type of aircraft. The performance of aircraft consisting of a conventional

aluminum fuselage in an inaccessible in-flight fire scenario is understood based on service history and extensive intermediate and large-scale fire testing. The fuselage itself does not contribute to in-flight fire propagation. This may not be the case for an all-composite fuselage. The existing regulations do not adequately address protection against an in-flight fire for an all-composite fuselage. These special conditions are necessary to ensure a level of safety equivalent to that provided by existing regulations.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Learjet Inc. must show that the Model LJ–200 airplane meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–127, and 14 CFR part 26, as amended by Amendment 26–1 through 26–2.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model LJ–200 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model LJ–200 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Model LJ–200 airplane will incorporate the following novel or unusual design features: The fuselage will be fabricated using composite materials instead of conventional aluminum.

Discussion

The Model LJ–200 airplane will make extensive use of composite materials in the fabrication of the majority of the wing, fuselage skin, stringers, spars, and most other structural elements of all major sub-assemblies of the airplane. Despite the major change from aluminum to composite material for the fuselage, the Model LJ–200 airplane must have in-flight survivability such that the composite fuselage does not propagate a fire. A methodology for assessing the in-flight fire survivability of an all-composite fuselage is therefore needed.

The FAA believes that one way to assess the survivability within the cabin of the Model LJ–200 airplane is to conduct large-scale tests. These large-scale tests would use a mock-up of a Model LJ–200 airplane fuselage skin/structure section of sufficient size to assess any tendency for fire propagation. The fire threat used to represent the realistic ignition source in the airplane would consist of a 4″ x 4″ x 9″ polyurethane foam block and 10 ml of Heptane. This ignition source provides approximately three minutes of flame time and would be positioned at various points and orientations within the mocked up installation to impinge on those areas of the fuselage considered to be most crucial.

This fire threat was established based on an assessment of a range of potential ignition sources, coupled with possible contamination of materials. The FAA considers this a severe fire threat, encompassing a variety of scenarios. However, should ignition or fire sources of a greater severity be identified, these special conditions or the method of compliance would need to be modified in order to take the more severe threat into account.

Despite the major change from aluminum to composite material for the fuselage, the Model LJ–200 must have in-flight fire survivability such that the composite fuselage is no worse than that of a similar aluminum structure.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion of Comments

Notice of proposed special conditions No. 25–14–01–SC for the Learjet Inc. Model LJ–200–1A10 airplane was published in the **Federal Register** on February 7, 2014 (79 FR 7406). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Model LJ–200 airplane. Should Learjet Inc. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Learjet Inc. Model LJ–200–1A10 airplane.

Composite Fuselage In-Flight Fire/Flammability Resistance. The Learjet Inc. Model LJ–200 composite fuselage structure must be shown to be resistant to flame propagation under the fire threat used to develop § 25.856(a). If products of combustion are observed beyond the test heat source, they must be evaluated and found acceptable.

Issued in Renton, Washington, on June 6, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–17518 Filed 7–24–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2013–0904; Special Conditions No. 25–542–SC]

Special Conditions: Airbus Model A350–900 Series Airplane; Electronic Flight-Control System: Lateral-Directional and Longitudinal Stability, and Low-Energy Awareness

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for Airbus Model A350–900 series airplanes. These airplanes will

have a novel or unusual design feature associated with lateral-directional and longitudinal stability, and low-energy awareness. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* August 25, 2014.

FOR FURTHER INFORMATION CONTACT: Joe Jacobsen, FAA, Airplane and Flightcrew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2011; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Background

On August 25, 2008, Airbus applied for a type certificate for their new Model A350–900 series airplane. Later, Airbus requested, and the FAA approved, an extension to the application for FAA type certification to November 15, 2009. The Model A350–900 series airplane has a conventional layout with twin wing-mounted Rolls-Royce Trent XWB engines. It features a twin-aisle, 9-abreast, economy-class layout, and accommodates side-by-side placement of LD–3 containers in the cargo compartment. The basic Model A350–900 airplane configuration accommodates 315 passengers in a standard two-class arrangement. The design cruise speed is Mach 0.85 with a maximum take-off weight of 602,000 lbs.

Lateral-Directional Static Stability

The electronic flight-control system (EFCS) on the A350 airplane, like its predecessors the A320, A330, A340, and A380 airplanes, contains fly-by-wire control laws that can result in neutral lateral-directional static stability; therefore, the conventional requirements in the regulations are not met.

Positive static directional stability is defined as the tendency to recover from a skid with the rudder free. Positive static lateral stability is defined as the tendency to raise the low wing in a sideslip with the aileron controls free. These control criteria are intended to accomplish the following:

1. Provide additional cues of inadvertent sideslips and skids through control-force changes.
2. Ensure that short periods of unattended operation do not result in any significant changes in yaw or bank angle.
3. Provide predictable roll and yaw response.
4. Provide an acceptable level of pilot attention (workload) to attain and maintain a coordinated turn.

The Flight Test Harmonization Working Group has recommended a rule and advisory-material change for § 25.177, static lateral-directional stability. This harmonized text will form the basis for these special conditions.

Longitudinal Static Stability

Static longitudinal stability on airplanes with mechanical links to the pitch-control surface means that a pull force on the controller will result in a reduction in speed relative to the trim speed, and a push force will result in a higher speed than the trim speed. Longitudinal stability is required by the regulations for the following reasons:

1. Speed-change cues are provided to the pilot through increased and decreased forces on the controller.
2. Short periods of unattended control of the airplane do not result in significant changes in attitude, airspeed, or load factor.
3. A predictable pitch response is provided to the pilot.
4. An acceptable level of pilot attention (workload) to attain and maintain trim speed and altitude is provided to the pilot.
5. Longitudinal stability provides gust stability.

The pitch-control movement of the sidestick on the A350 airplane is designed to be a normal load factor or ''g'' command that results in an initial movement of the elevator surface to attain the commanded load factor, which is then followed by integrated movement of the stabilizer and elevator to automatically trim the airplane to a neutral, 1g, stick-free stability. The flight path commanded by the initial sidestick input will remain stick-free until the pilot provides another command. This control function is applied during ''normal'' control law within the speed range from initiation of the angle-of-attack protection limit, $V_{\alpha prot}$, to V_{MO}/M_{MO}. Once outside this speed range, the control laws introduce the conventional longitudinal static stability as described above.

As a result of neutral static stability, the A350 airplane does not meet the requirements of 14 CFR part 25 for static longitudinal stability.

Low Energy Awareness

Past experience on airplanes fitted with a flight-control system providing neutral longitudinal stability shows insufficient feedback cues to the pilot of excursion below normal operational speeds. The maximum-angle-of-attack protection system limits the airplane angle of attack and prevents stall during normal operating speeds, but this system is not sufficient to prevent stall at low-speed excursions below normal operational speeds. Until intervention, the pilot has no stability cues because the aircraft remains trimmed. Additionally, feedback from the pitching moment, due to thrust variation, is reduced by the flight-control laws. Recovery from a low-speed excursion may become hazardous when the low-speed situation is associated with a low altitude, and with the engines at low thrust or with performance-limiting conditions.

Type Certification Basis

Under Title 14, Code of Federal Regulations (14 CFR) 21.17, Airbus must show that the Model A350–900 series airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–129.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model A350–900 series airplane because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model A350–900 series airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36. The FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, under § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Airbus Model A350–900 series airplane will incorporate the following novel or unusual design features: A flight-control design feature within the normal operational envelope in which sidestick deflection in the roll axis commands roll rate; an operational

design that does not comply with the static longitudinal stability requirements of §§ 25.171, 25.173, and 25.175; and a low-energy state where recovery may become hazardous when associated with both a low altitude and performance-limiting conditions.

Discussion

In the absence of positive lateral stability, the curve of lateral control-surface deflections against sideslip angle should be in a conventional sense, and reasonably in harmony with rudder deflection during steady-heading sideslip maneuvers.

Since conventional relationships between stick forces and control-surface displacements do not apply to the ''load-factor command'' flight-control system on the A350 airplane, longitudinal stability characteristics should be evaluated by assessing the airplane's handling qualities during simulator and flight-test maneuvers appropriate to operation of the airplane. Airbus may accomplish this by using the Handling Qualities Rating Method presented in Appendix 5 of the *Flight Test Guide,* AC 25–7C, or an acceptable alternative method. Important considerations are as follows:

a. Adequate speed control without excessive pilot workload,

b. Acceptable high- and low-speed protection, and

c. Provision for adequate cues to the pilot of significant speed excursions beyond V_{MO}/M_{MO}, and low-speed-awareness flight conditions.

The airplane should provide adequate awareness cues to the pilot of a low-energy (low speed/low thrust/low height) state to ensure that the airplane retains sufficient energy to recover when flight-control laws provide neutral longitudinal stability significantly below the normal operating speeds. This may be accomplished as follows:

a. Adequate low-speed/low-thrust cues at low altitude may be provided by a strong, positive, static, stability force gradient (1 pound per 6 knots applied through the sidestick), or

b. The low-energy awareness may be provided by an appropriate warning with the following characteristics:

i. It should be unique, unambiguous, and unmistakable.

ii. It should be active at appropriate altitudes and in appropriate configurations (i.e., at low altitude, in the approach and landing configurations).

iii. It should be sufficiently timely to allow recovery to a stabilized flight condition inside the normal flight envelope, while maintaining the desired flight path and without entering the flight controls angle-of-attack protection mode.

iv. It should not be triggered during normal operation, including operation in moderate turbulence for recommended maneuvers at recommended speeds.

v. It should not be cancelable by the pilot other than by achieving a higher-energy state.

vi. There should be an adequate hierarchy among the various warnings so that the pilot is not confused and led to take inappropriate recovery action if multiple warnings occur.

Global energy awareness and non-nuisance of low-energy cues should be evaluated by simulator and flight tests in the whole take-off and landing altitude range for which certification is requested. This would include all relevant combinations of weight, center-of-gravity position, configuration, airbrakes position, and available thrust, including reduced and de-rated take-off thrust operations and engine-failure cases. A sufficient number of tests should be conducted, allowing the level of energy awareness and the effects of energy-management errors to be assessed.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion of Comments

Notice of Proposed Special Conditions No. 25–13–14–SC for Airbus Model A350–900 series airplanes was published in the **Federal Register** on January 14, 2014 (79 FR 2384). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions apply to Airbus Model A350–900 series airplanes. Should Airbus apply later for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the Airbus Model A350–900 series airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type-certification basis for Airbus Model A350–900 series airplanes.

(1) Electronic Flight-Control System: Lateral-Directional and Longitudinal Stability, and Low-Energy Awareness. In lieu of the requirements of §§ 25.171, 25.173, 25.175 and 25.177, the following special conditions apply:

(a) The airplane must be shown to have suitable static lateral, directional, and longitudinal stability in any condition normally encountered in service, including the effects of atmospheric disturbance. The showing of suitable static lateral, directional, and longitudinal stability must be based on the airplane handling qualities, including pilot workload and pilot compensation, for specific test procedures during the flight-test evaluations.

(b) The airplane must provide adequate awareness to the pilot of a low-energy (low speed/low thrust/low height) state when fitted with flight-control laws presenting neutral longitudinal stability significantly below the normal operating speeds. ''Adequate awareness'' means warning information must be provided to alert the crew of unsafe operating conditions and to enable them to take appropriate corrective action.

(c) The static directional stability (as shown by the tendency to recover from a skid with the rudder free) must be positive for any landing gear and flap position, and symmetrical power condition, at speeds from 1.13 V_{SR1}, up to V_{FE}, V_{LE}, or V_{FC}/M_{FC} (as appropriate).

(d) The static lateral stability (as shown by the tendency to raise the low wing in a sideslip with the aileron controls free) for any landing gear and wing-flap position, and symmetric power condition, may not be negative at any airspeed (except that speeds higher than V_{FE} need not be considered for wing-flaps-extended configurations, nor speeds higher than V_{LE} for landing-gear-extended configurations) in the following airspeed ranges:

(i) From 1.13 V_{SR1} to V_{MO}/M_{MO}.

(ii) From V_{MO}/M_{MO} to V_{FC}/M_{FC}, unless the divergence is –

(1) Gradual;

(2) Easily recognizable by the pilot; and

(3) Easily controllable by the pilot.

(e) In straight, steady sideslips over the range of sideslip angles appropriate to the operation of the airplane, but not less than those obtained with one-half of the available rudder-control movement (but not exceeding a rudder-control force of 180 pounds), rudder-control movements and forces must be substantially proportional to the angle of sideslip in a stable sense; and the factor of proportionality must lie between limits found necessary for safe operation. This requirement must be met for the configurations and speeds specified in paragraph (c) of this section.

(f) For sideslip angles greater than those prescribed by paragraph (e) of this section, up to the angle at which full rudder control is used or a rudder-control force of 180 pounds is obtained, the rudder-control forces may not reverse, and increased rudder deflection must be needed for increased angles of sideslip. Compliance with this requirement must be shown using straight, steady sideslips, unless full lateral-control input is achieved before reaching either full rudder-control input or a rudder-control force of 180 pounds; a straight, steady sideslip need not be maintained after achieving full lateral-control input.

This requirement must be met at all approved landing-gear and wing-flap positions for the range of operating speeds and power conditions appropriate to each landing-gear and wing-flap position with all engines operating.

Issued in Renton, Washington, on July 9, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–17575 Filed 7–24–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2013–0911; Special Conditions No. 25–539–SC]

Special Conditions: Airbus Model A350–900 Airplanes; Lateral-Trim Function Through Differential Flap Setting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for Airbus Model A350–900 airplanes. These airplanes will have a novel or unusual design feature associated with a lateral-trim function that deploys flaps asymmetrically for airplane lateral-trim control. This function replaces the traditional method of providing airplane lateral trim over a small range through flap and aileron mechanical rigging. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* August 25, 2014.

FOR FURTHER INFORMATION CONTACT: Robert C. Jones, FAA, Propulsion and Mechanical Systems, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1234; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Background

On August 25, 2008, Airbus applied for a type certificate for their new Model A350–900 airplane. Later, Airbus requested, and the FAA approved, an extension to the application for FAA type certification to November 15, 2009. The Model A350–900 airplane has a conventional layout with twin wing-mounted Rolls-Royce Trent XWB engines. It features a twin-aisle, 9-abreast, economy-class layout, and accommodates side-by-side placement of LD–3 containers in the cargo compartment. The basic Model A350–900 airplane configuration accommodates 315 passengers in a standard two-class arrangement. The design cruise speed is Mach 0.85 with a maximum take-off weight of 602,000 lbs.

On conventional airplanes, small, lateral, airplane asymmetries typically have been addressed through flap and aileron rigging (e.g., using shims). On Model A350–900 airplanes, an order for asymmetric flap deployment will be computed by the primary flight-control system as a function of the aileron position. The current airworthiness standards do not contain adequate safety standards for asymmetric use of the flaps for Airbus Model A350–900 airplanes. Special conditions are needed to account for the aspects of a function used to command an intended flap asymmetry. The lateral-trim function is intended to be performed once during climb and once during cruise to compensate for airplane small lateral asymmetries.

The lateral-trim function is not a trim-control system in the conventional sense as it has no pilot interface and is not governed by Title 14, Code of Federal Regulations (14 CFR) 25.677. Some fly-by-wire airplanes have no pilot-operated lateral trim at all. The lateral-trim function is simply an additional fly-by-wire flight-control function that nulls small roll asymmetries in certain flight phases with small, asymmetric flap deployments. Although the function operates under normal conditions within the small range of the traditional rigging, failure cases may result in a significant out-of-range asymmetric flap condition. An asymmetry threshold protects the system against excessive flap asymmetry.

Type Certification Basis

Under 14 CFR 21.17, Airbus must show that the Model A350–900 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–129.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model A350–900 airplane because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model A350–900 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36. The FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, under § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Airbus Model A350–900 airplane incorporates the following novel or unusual design features: The asymmetric use of flaps to address lateral trim, which is not adequately addressed by § 25.701.

Discussion

Section 25.701(a) requires that, unless the airplane has safe-flight characteristics with the flaps or slats retracted on one side and extended on the other, flap and slat surfaces must be synchronized by either a mechanical interconnection or any equivalent means that has the same integrity. Synchronization is interpreted to mean that flap movement is symmetrical throughout the full range of flap motion. Because the lateral-trim function intentionally creates asymmetric flap motions, the flap-system installation of the Model A350–900 airplane does not meet the requirement of § 25.701(a) and (d).

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion of Comments

Notice of proposed special conditions no. 25–13–22–SC for Airbus Model A350–900 airplanes was published in the **Federal Register** on January 8, 2014 (79 FR 1339). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions apply to Airbus Model A350–900 airplanes. Should Airbus apply later for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the Airbus Model A350–900 airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type-certification basis for Airbus Model A350–900 airplanes:

Lateral-Trim Function Through Differential Flap Setting

Current airworthiness standards, specifically § 25.701, do not contain adequate safety standards for this airplane design. In lieu of the requirements of § 25.701(a) and (d) for the lateral-trim function, the following special condition are issued:

1. Airbus must demonstrate that an unsafe condition is not created by using the flaps asymmetrically.

2. The degree of acceptable asymmetry must be defined and justified for all flight phases with respect to:

a. Section 25.701(b) and (c), with the worst-case asymmetric flap configurations, and

b. Providing equivalent protection against excess asymmetry in the same manner as § 25.701 provides to systems that are synchronized, or use another equivalent means to prevent asymmetry.

3. This lateral-trim function is a flight-control system and therefore must be shown to comply with both general system requirements as well as general flight-control requirements. Therefore, the function must be demonstrated not to have significant latent failures, where practicable.

Issued in Renton, Washington, on July 9, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–17578 Filed 7–24–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2013–0892; Special Conditions No. 25–537–SC]

Special Conditions: Airbus A350–900 Airplane; Crashworthiness, Emergency Landing Conditions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for Airbus Model A350–900 airplanes. These airplanes have a novel or unusual design feature associated with crashworthiness of carbon-fiber-reinforced plastic used in the construction of the fuselage. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* August 25, 2014.

FOR FURTHER INFORMATION CONTACT: Todd Martin, FAA, Airframe/Cabin Safety, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1178; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Background

On August 25, 2008, Airbus applied for a type certificate for their new Model A350–900 airplane. Later, Airbus requested, and the FAA approved, an extension to the application for FAA type certification to November 15, 2009. The Model A350–900 airplane has a conventional layout with twin wing-mounted Rolls-Royce Trent XWB engines. It features a twin-aisle, 9-abreast, economy-class layout, and accommodates side-by-side placement of LD–3 containers in the cargo compartment. The basic Model A350–900 airplane configuration accommodates 315 passengers in a standard two-class arrangement. The design cruise speed is Mach 0.85 with a maximum take-off weight of 602,000 lbs.

Changes in the structural behavior of the Airbus Model A350–900 airplane, compared to currently certificated designs, could degrade the survivability of the Model A350–900 airplane occupants in crash conditions that are within the limits of survivability for other designs.

The airworthiness regulations specify no aircraft-level survivable crash condition, and metallic aircraft have not been designed specifically against survivable impact conditions. However, the structural behavior of previously certificated aircraft in a survivable crash event, and the associated limits, are considered generally acceptable. It is therefore reasonable to expect that a design using new materials, such as the Model A350–900 airplanes use, should be assessed to ensure that the material meets the currently accepted level of safety.

The FAA and industry have collected a significant amount of experimental data, as well as data from crashes of transport-category airplanes, that show a high occupant-survival rate at vertical-descent velocities up to 30 ft/sec. Based on this information, the FAA finds it appropriate and necessary for an

assessment of the Model A350–900 airplane to span a range of airplane vertical-descent speeds up to 30 ft/sec.

Type Certification Basis

Under Title 14, Code of Federal Regulations (14 CFR) 21.17, Airbus must show that the Model A350–900 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–129.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model A350–900 airplane because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model A350–900 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise-certification requirements of 14 CFR part 36. The FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, under § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Airbus Model A350–900 airplane incorporates the following novel or unusual design feature: A fuselage fabricated with a combination of carbon-fiber-reinforced plastic (CFRP) and metallic structure. This is a novel and unusual design feature for a large transport airplane. Structure fabricated from CFRP may behave differently than metallic structure in crash conditions because of differences in material ductility, stiffness, failure modes, and energy-absorption characteristics. Therefore, the impact-response characteristics of the Model A350–900 airplane must be evaluated to ensure that its survivable crashworthiness characteristics provide at least the same level of safety as those of a similarly sized airplane constructed from traditional metallic materials.

No existing regulations adequately address this potential difference in impact-response characteristics for what are considered survivable crash conditions. The special conditions are necessary to ensure a level of safety equivalent to that provided by 14 CFR part 25.

Discussion

Factors in crash survivability are:

- Retention of items of mass,
- maintenance of occupant emergency egress paths,
- maintenance of acceptable acceleration and loads experienced by the occupants, and
- maintenance of a survivable volume.

To provide the same level of safety as exists with conventional airplane construction, Airbus should show that the Model A350–900 airplane has sufficient crashworthiness capabilities under foreseeable survivable impact events. To show this, Airbus should evaluate the impact-response characteristics of the Model A350–900 airplane to ensure that its crashworthiness characteristics are not significantly different from those of a similarly sized airplane built from traditional metallic materials.

In their evaluation of the Model A350–900 airplane response to an impact event, Airbus should demonstrate that the structural behavior is similar to that expected from a metallic airframe of a size similar to the Model A350–900, or incorporate mitigating design features that provide a similar level of safety.

Airbus should demonstrate, either through analysis using validated analytical tools or by direct-test evidence, that the crash dynamics of the Model A350–900 fuselage structure provides a level of occupant protection consistent with previously certificated large transport-category airplanes.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion of Comments

Notice of Proposed Special Conditions No. 25–13–21–SC for the Airbus Model A350–900 airplane was published in the **Federal Register** on January 8, 2014 (79 FR 1337). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions apply to Airbus Model A350–900 airplanes. Should Airbus apply later for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the Airbus Model A350–900 airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type-certification basis for Airbus Model A350–900 airplanes.

The Airbus Model A350–900 airplane must provide an equivalent level of occupant safety and survivability, to that provided by previously certificated wide-body transport-category airplanes of similar size, under foreseeable survivable impact events for the following four criteria. To demonstrate an equivalent level of occupant safety and survivability, the applicant must demonstrate that Model A350–900 airplanes meet the following criteria for a range of airplane vertical-descent velocities up to 30 ft/sec.

1. Retention of Items of Mass

The occupants, i.e., passengers, flight attendants, and flightcrew, must be protected during the impact event from release of seats, overhead bins, and other items of mass, due to the impact loads and resultant structural deformation of the supporting airframe and floor structures. The applicant must show that loads, due to the impact event and resultant structural deformation of the supporting airframe and floor structure at the interface of the airplane structure to seats, overhead bins, and other items of mass, are comparable to those of previously certificated wide-body transports of similar size for the range of descent velocities stated above. The attachments of these items need not be designed for static emergency-landing loads in excess of those defined in § 25.561 if impact-response characteristics of the Airbus Model A350–900 airplane yields load factors at the attach points that are comparable to those for a previously certificated wide-body transport-category airplane.

2. Maintenance of Acceptable Acceleration and Loads Experienced by the Occupants

The applicant must show that the impact response characteristics of the Airbus Model A350–900 airplane, specifically the vertical acceleration levels experienced at the seat/floor interface, and loads experienced by the occupants during the impact events, are consistent with those found in § 25.562(b), or with levels expected for a previously certificated wide-body transport-category airplane for the conditions stated above.

3. Maintenance of a Survivable Volume

For the conditions stated above, the applicant must show that all areas of the airplane occupied for takeoff and landing provide a survivable volume comparable to that of previously certificated wide-body transport-category airplanes of similar size during and after the impact event. This means that structural deformation will not result in infringement of the occupants' normal living space, so that passenger survivability will not be significantly affected.

4. Maintenance of Occupant Emergency Egress Paths

The evacuation of occupants must be comparable to that from a previously certificated wide-body transport-category airplane of similar size. To show this, the applicant must show that the suitability of the egress paths, as determined following the vertical-impact events, is comparable to the suitability of the egress paths of a comparable, certificated, wide-body transport-category airplane, as determined following the same vertical-impact events.

Issued in Renton, Washington, on July 9, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–17574 Filed 7–24–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2013–0910; Special Conditions No. 25–534–SC]

Special Conditions: Airbus Model A350–900 Airplanes; Isolation or Protection of the Aircraft Electronic System Security From Unauthorized Internal Access

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for Airbus Model A350–900 airplanes. These airplanes will have a novel or unusual design feature associated with airplane electronic system security protection or isolation from unauthorized internal access. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* August 25, 2014.

FOR FURTHER INFORMATION CONTACT: Varun Khanna, FAA, Airplane and Flightcrew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone (425) 227–1298; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Background

On August 25, 2008, Airbus applied for a type certificate for their new Model A350–900 airplane. Later, Airbus requested, and the FAA approved, an extension to the application for FAA type certification to November 15, 2009. The Model A350–900 airplane has a conventional layout with twin wing-mounted Rolls-Royce Trent XWB engines. It features a twin-aisle, 9-abreast, economy-class layout, and accommodates side-by-side placement of LD–3 containers in the cargo compartment. The basic Model A350–900 airplane configuration accommodates 315 passengers in a standard two-class arrangement. The design cruise speed is Mach 0.85 with a maximum take-off weight of 602,000 lbs.

Contemporary transport-category airplanes have both safety-related and non-safety-related electronic system networks for many operational functions. However, electronic system network security considerations and functions have played a relatively minor role in the certification of such systems because of the isolation, protection mechanisms, and limited connectivity between the different networks.

Type Certification Basis

Under Title 14, Code of Federal Regulations (14 CFR) 21.17, Airbus must show that the Model A350–900 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–129.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model A350–900 airplane because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model A350–900 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36. The FAA must issue a finding of regulatory adequacy under section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, under § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Airbus Model A350–900 airplane will incorporate the following novel or unusual design feature: An electronics network system architecture that is novel or unusual for commercial transport airplanes, and that introduces potential security risks and vulnerabilities not addressed in current regulations and airplane-level or system-level safety assessment methods.

Discussion

The Airbus Model A350–900 airplane architecture is novel or unusual for commercial transport airplanes because it allows connection to previously isolated data networks connected to systems that perform functions required

for the safe operation of the airplane. This data network-and-design integration may result in security vulnerabilities from intentional or unintentional corruption of data and systems critical to the safety and maintenance of the airplane. The existing regulations and guidance material did not anticipate this type of system architecture or electronic access to airplane systems. Furthermore, 14 CFR regulations, and current system-safety assessment policy and techniques, do not address potential security vulnerabilities, which could be exploited by unauthorized access to airplane networks and servers. Therefore, these special conditions are to ensure that the security of airplane systems and networks is not compromised by unauthorized wired or wireless internal access.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion of Comments

Notice of proposed special conditions no. 25–13–20–SC for Airbus Model A350–900 airplanes was published in the **Federal Register** on December 17, 2013 (78 FR 76252). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to Airbus Model A350–900 airplanes. Should Airbus apply later for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on Airbus Model A350–900 airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type-certification basis for Airbus Model A350–900 airplanes.

Isolation of the Airplane Electronic System Security Protection from Unauthorized Internal Access

1. The applicant must ensure that the design provides isolation from, or airplane electronic system security protection against, access by unauthorized sources internal to the airplane. The design must prevent inadvertent and malicious changes to, and all adverse impacts upon, airplane equipment, systems, networks, or other assets required for safe flight and operations.

2. The applicant must establish appropriate procedures to allow the operator to ensure that continued airworthiness of the airplane is maintained, including all post-type-certification modifications that may have an impact on the approved electronic system security safeguards.

Issued in Renton, Washington, on July 9, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–17576 Filed 7–24–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2014–0396]

Interpretation of the Special Rule for Model Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of interpretation with request for comment; Extension of comment period.

SUMMARY: The FAA is extending the comment period on its Interpretation of the Special Rule for Model Aircraft that was published on June 25, 2014.

DATES: The comment period for the notice of interpretation published June 25, 2014 (79 FR 36172), is extended. Comments must be received on or before September 23, 2014.

ADDRESSES: You may send comments identified by docket number FAA–2014–0396 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: Dean E. Griffith, Attorney, International Law, Legislation, and Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3073; email: *dean.griffith@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA published a notice of interpretation with request for comment in the **Federal Register** on June 25, 2014 (79 FR 36172) that discussed the FAA's interpretation of the Special Rule for Model Aircraft established in section 336 of the FAA Modernization and Reform Act of 2012. The notice requested that interested parties submit written comments by July 25, 2014.

On July 16, 2014, the Academy of Model Aeronautics submitted a request to extend the comment period by 60 days, citing the need to ''educate the aeromodeling community, clarify the issues, and respond to questions regarding the impact that the interpretive rule has on various aspects of the modeling activity.'' The FAA agrees that additional time for the submission of comments would be helpful, and therefore has decided to extend the comment period until September 23, 2014. The FAA expects that the additional time for comments will allow the affected community to prepare meaningful comments which will help the FAA to determine what clarifications to the interpretation may be necessary.

Issued in Washington, DC, on July 22, 2014.

Mark W. Bury,

Assistant Chief Counsel for International Law, Legislation, and Regulations.

[FR Doc. 2014–17528 Filed 7–24–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 876

[Docket No. FDA–2012–N–0303]

Gastroenterology-Urology Devices; Reclassification of Implanted Blood Access Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final order to reclassify implanted blood access devices, a preamendments class III device, into class II (special controls) based on new information and subject to premarket notification and to further clarify the identification.

DATES: This order is effective July 25, 2014.

FOR FURTHER INFORMATION CONTACT: Rebecca Nipper, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1540, Silver Spring, MD 20993, 301–796–6527, *rebecca.nipper@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), the Safe Medical Devices Act of 1990 (Pub. L. 101–629), the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115), the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107–250), the Medical Devices Technical Corrections Act (Pub. L. 108–214), the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85), and the Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112–144), establishes a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) established three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513(d) of the FD&C Act, devices that were in commercial distribution before the enactment of the 1976 amendments, May 28, 1976 (generally referred to as preamendments devices), are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the Panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976 (generally referred to as postamendments devices), are automatically classified by section 513(f) of the FD&C Act into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval unless, and until, the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

On July 9, 2012, FDASIA was enacted. Section 608(a) of FDASIA amended section 513(e) of the FD&C Act, changing the mechanism for reclassifying a device from rulemaking to an administrative order.

Section 513(e) of the FD&C Act governs reclassification of classified preamendments devices. This section provides that FDA may, by administrative order, reclassify a device based upon ''new information.'' FDA can initiate a reclassification under section 513(e) or an interested person may petition FDA to reclassify a preamendments device. The term ''new information,'' as used in section 513(e) of the FD&C Act, includes information developed as a result of a reevaluation of the data before the Agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland-Rantos Co.* v. *United States Department of Health, Education, and Welfare,* 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch,* 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard,* 366 F.2d 177 (7th Cir. 1966)).

Reevaluation of the data previously before the Agency is an appropriate basis for subsequent action where the reevaluation is made in light of newly available authority (see *Bell,* 366 F.2d at 181; *Ethicon, Inc.* v. *FDA,* 762 F.Supp. 382, 388–391 (D.D.C. 1991)), or in light of changes in ''medical science'' (*Upjohn,* 422 F.2d at 951). Whether data before the Agency are old or new data, the ''new information'' to support reclassification under section 513(e) must be ''valid scientific evidence,'' as defined in section 513(a)(3) of the FD&C Act and 21 CFR 860.7(c)(2). (See, e.g., *General Medical Co.* v. *FDA,* 770 F.2d 214 (D.C. Cir. 1985); *Contact Lens Manufacturers Association* v. *FDA,* 766 F.2d 592 (D.C. Cir. 1985), cert. denied, 474 U.S. 1062 (1986)).

FDA relies upon ''valid scientific evidence'' in the classification process to determine the level of regulation for devices. To be considered in the reclassification process, the ''valid scientific evidence'' upon which the Agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, e.g., the contents of a pending premarket approval application (PMA). (See section 520(c) of the FD&C Act (21 U.S.C. 360j(c))). Section 520(h)(4) of the FD&C Act, added by FDAMA, provides that FDA may use, for reclassification of a device, certain information in a PMA 6 years after the application has been approved. This includes information from clinical and preclinical tests or studies that demonstrate the safety or effectiveness of the device but does not include descriptions of methods of manufacture or product composition and other trade secrets.

Section 513(e)(1) of the FD&C Act sets forth the process for issuing a final order. Specifically, prior to the issuance of a final order reclassifying a device, the following must occur: (1) Publication of a proposed order in the **Federal Register**; (2) a meeting of a device classification panel described in section 513(b) of the FD&C Act; and (3) consideration of comments to a public docket. FDA published a proposed order to reclassify this device in the **Federal Register** of June 28, 2013 (78 FR 38867). FDA received and has considered one comment on this proposed order, as discussed in section II. FDA has held a meeting of a device classification panel described in section 513(b) of the FD&C Act with respect to implanted blood access devices, and therefore, has met this requirement under section 513(e)(1) of the FD&C Act. As explained further in section III, a meeting of a device classification panel described in section 513(b) of the FD&C Act, the Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee (the Panel), took place on June 27, 2013 (78 FR 25747, May 2,

2013), to discuss whether implanted blood access devices should be reclassified or remain in class III. The reclassification of implanted blood access devices was mostly supported by the Panel. During deliberations, the Panel recommended that implanted hemodialysis catheters and implanted coated hemodialysis catheters be reclassified into class II because there was sufficient information to establish special controls, with the provision of slight modifications to the risks to health, as well as the proposed special controls. The majority of the Panel members expressed concern that the risks associated with the fully subcutaneous implanted blood access devices (port-catheter systems or fully subcutaneous port-catheter systems) or the arteriovenous (A–V) shunt cannulae might not be mitigated by the proposed special controls and recommended that these two implanted blood access device subtypes remain in class III. Details of the Panel's recommendations and FDA's response are provided in section III.

FDA is not aware of new information since the Panel meeting that would provide a basis for a different recommendation or findings.

II. Public Comments in Response to the Proposed Order

In response to the June 28, 2013, proposed order to reclassify implanted blood access devices, FDA did not receive any comments. However, in response to the draft guidance that published the same day (78 FR 38994, June 28, 2013) FDA received one comment. The comment included suggestions for revision to the proposed special controls, and is therefore relevant to the proposed order. In general, the comment supported FDA's intent to reclassify implanted blood access devices including the implementation of special controls. Regarding the special controls, the commenter recommended that the special control relating to mechanical hemolysis be modified to specify that it only applies to devices that include a new or altered blood flow pattern. They also recommended that chemical tolerance testing only be necessary for the disinfection agents listed within the product labeling, and not to all ''commonly used disinfection agents,'' and that the compatible agents must be listed in the labeling, as opposed to a listing of the disinfecting agents that cannot be used. Finally, in relation to disinfecting agents, the commenter suggested that the term ''contraindicated'' be avoided and suggested alternative language regarding providing appropriate information to users regarding incompatible disinfecting agents. It was also recommended that the special control relating to sterility be modified to specify that not only the package remain sterile, but also its contents.

FDA continues to believe that the proposed special controls (section VIII of the proposed order), with minor modifications as discussed in section III, provide a reasonable assurance of safety and effectiveness. Although the Panel did not comment specifically on any of the revisions recommended by the commenter, FDA considered the suggestions and adopted the recommendations regarding mechanical hemolysis testing, as reflected in the revised special control.

Regarding the comments relating to the testing and labeling of compatible cleaning and disinfecting agents, FDA agrees that an alternative to printing contraindicated disinfecting agents directly on the catheter would be to provide the information on both the patient's medical record and directly to the patient via an implant card. The associated special control has been modified from that proposed only to specifically state that a patient implant card must be provided, which was not previously stated. FDA disagrees, however, with the other comments regarding disinfecting agents, and believes that in order to reasonably assure the safety and effectiveness of implanted blood access devices, due to the variation in facility protocols regarding care and maintenance of this device type, chemical tolerance to or incompatibility with commonly used disinfection agents must be established. It is insufficient to only conduct chemical tolerance testing for the compatible disinfection agents listed within the product labeling. Therefore, the related special control regarding the requirement to establish the device's chemical tolerance to repeated exposure to commonly used disinfection agents remains unchanged. FDA believes that the requirement that the device remain sterile in addition to the packaging has been adequately captured in the proposed special control, and therefore no associated changes were made.

FDA believes that the special controls provide a reasonable assurance of safety and effectiveness for implanted blood access devices that feature similar technology and indications. The Agency believes it has now identified all relevant risks to health (see section V of the proposed order for the originally identified risks to health and section III of this document for updated risks to health based on Panel recommendations) and that the mitigation methods described in the associated special controls will be effective in mitigating these risks. These risks and mitigations were based on recommendations from the June 27, 2013, Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee (Ref. 1) as further described in section III; the information gathered from the Manufacturer and User Facility Device Experience database and FDA's literature review (see FDA's Executive Panel Summary, Ref. 2); and information provided in response to the proposed order.

III. Deliberations of the Panel

In Session II of the June 27, 2013, device classification panel meeting, the Panel considered the reclassification of implanted blood access devices (Ref. 1) from class III to class II (special controls). The Panel was asked to provide input on the risks to health, safety, and effectiveness of these devices.

The reclassification of implanted blood access devices was partially supported by the Panel. During deliberations, the Panel concluded that it would be acceptable to reclassify the implanted hemodialysis catheters and the implanted coated hemodialysis catheters into class II with slight modifications to the risks to health as well as the proposed special controls, as discussed further in this document. However, the Panel expressed concern that the proposed special controls may not be adequate to mitigate the risks associated with the fully subcutaneous port-catheter systems or the A–V shunt cannulae and, as a result of this concern over the ability to establish adequate special controls, recommended that these two implanted blood access device subtypes remain in class III. The concern for the fully subcutaneous port-catheter devices was based on a higher risk of infectious complications historically noted for these devices compared with other types of implanted blood access devices for hemodialysis. Because the A–V shunt cannulae access the arterial circulation, the Panel expressed concerns that the risks of arterial thrombosis, premature separation, severe bleeding, air embolism, and steal syndrome might not be mitigated by the proposed special controls.

FDA does not agree with the Panel that these two device subtypes should remain in class III. To address the concerns expressed by the Panel, FDA has modified the special controls by including additional special controls that will require the submission of

clinical performance data for these two device subtypes. Of note, arteriovenous grafts (vascular graft prostheses), another type of implanted vascular access for hemodialysis, are similar to A–V shunt cannulae in that they also access the arterial circulation. These devices are currently regulated as class II medical devices (21 CFR 870.3450). A–V shunt cannulae are unique in that they have an external component, but FDA believes the overall categories of risk are similar. Fully subcutaneous port-catheter systems indicated for infusion, which have similar design features and a similar risk profile to the fully subcutaneous port-catheter systems indicated for hemodialysis, are currently also regulated as class II medical devices (21 CFR 880.5965). Based on reported adverse events and device recalls, and on the lack of increased infection being noted in current practice guidelines for these devices, FDA believes that arteriovenous grafts and fully subcutaneous port-catheter systems indicated for infusion are adequately regulated as class II devices. Given that devices with similar risk profiles, indications, and technologies are currently regulated as class II medical devices, FDA believes that special controls can be established for fully subcutaneous port-catheter devices and A–V shunt cannulae to mitigate the identified risks to health and provide a reasonable assurance of safety and effectiveness.

FDA presented the risks to health to the Panel, and the Panel fully supported the risks as originally identified, and provided the following additional comments. Several Panel members felt that the risks of arterial thrombosis (in addition to venous thrombosis), premature separation and bleeding, potential for exsanguination, air embolism, and steal syndrome should be included for A–V shunt cannulae. With the exception of steal syndrome, FDA believes that these risks were already included, but appreciates the Panel input with regard to the increased risks of thrombosis, bleeding, and air embolism when the devices are inserted into the arterial circulation. Clarifying comments have been added to the previously identified risks, and a new risk was added for vascular access steal syndrome. The Panel also felt that the risk of ''Infection and pyrogen reactions'' should be expanded to state that improper insertion, care, or maintenance of the device can also lead to infection. As a result, FDA has added clarifying statements to this previously identified risk to health. Similarly, the Panel members felt that the risk of anaphylaxis should be included as a risk for coated devices. FDA does not believe that this is a newly identified risk and has now included clarifying statements to include this risk subtype under the category of ''Adverse tissue reaction'' as well as additional language regarding the risks specific to coated devices. Clarifying statements have also been added to the category of ''Device Failure'' specifically relating the risk to coated devices in addition to non-coated devices.

Based upon the Panel's input as described and FDA's review, FDA has updated the risks to the following:

- *Thrombosis in patient, device occlusion, or central venous stenosis:* Inadequate blood compatibility of the materials used in this device, blood pooling between dialysis sessions, or turbulent blood pathways could lead to potentially debilitating or fatal thromboembolism. If the device accesses the arterial circulation, the device could cause arterial stenosis or thrombosis.
- *Adverse tissue reaction:* Inadequate tissue compatibility of the materials used in this device, including coatings or additives, could cause an immune reaction. This could include anaphylaxis for coated devices.
- *Infection and pyrogen reactions:* Skin or bloodstream infections could result from an improperly sterilized device, inappropriate preparation of the insertion site, or improper care and maintenance of the device exit site.
- *Device failure:* Weakness of connections or materials (including coatings or additives) could lead to breakage, which could result in blood loss or device fragment embolization.
- *Cardiac arrhythmia, hemorrhage, embolism, nerve injury, or vessel perforation:* Improper placement into the heart or blood vessel could damage tissues and result in injuries, such as vessel perforation. Inappropriate placement or removal of the device could cause air embolism or hemorrhage.
- *Hemolysis:* Turbulence or high pressure created by narrow openings or changes in blood flow paths could cause the destruction of red blood cells.
- *Accidental withdrawal or device migration:* The cuff of implanted devices may not allow adequate ingrowth from the surrounding subcutaneous tissue, which could cause the device to dislodge or fall out with subsequent blood loss. If the device accesses the arterial circulation, inadvertent separation could result in severe hemorrhage including exsanguination.
- *Vascular access steal syndrome associated with devices inserted into the artery and vein:* Alterations in blood flow paths could result if the device accesses both the arterial and venous circulation, which could result in decreased blood flow to the distal extremity.

The Panel agreed that general controls were not sufficient to provide a reasonable assurance of safety and effectiveness, and also that these devices are life-supporting or life-sustaining. The Panel mostly agreed that FDA's list of special controls from the June 28, 2013, proposed order would mitigate the identified risks and provide reasonable assurance of safety and effectiveness for the implanted hemodialysis catheters and the implanted coated hemodialysis catheters. Some of the panelists expressed concerns regarding the specificity of some of the proposed special controls and suggested modifications. As described further in this document, FDA largely agreed with the special control recommendations and has revised the special controls accordingly (see section IV. The Final Order). The special controls were also modified in response to the modifications to the risks to health previously described.

The Panel recommended updating the special control for labeling to include proper care and maintenance of the device and device exit-site and to specify appropriate qualifications for clinical providers performing the insertion, maintenance, and removal of the devices. FDA agreed with this recommendation. In response to the Panel's recommended modifications to the risks to health, a special control for labeling was also added for coated devices to include a Warning Statement for potential allergic reactions including anaphylaxis if the coating or additive contains known allergens. FDA also added labeling special controls for A–V shunt cannulae to include Warning Statements for vascular access steal syndrome, arterial stenosis, arterial thrombosis, and hemorrhage including exsanguination given that the device accesses the arterial circulation.

FDA added new special controls requiring clinical performance data for the fully subcutaneous port-catheter devices and the A–V shunt cannulae in order to address the Panel concerns for a higher risk of infectious complications historically noted for the fully subcutaneous devices and the risks of arterial thrombosis, premature separation, severe bleeding, air embolism, and steal syndrome for the A–V shunt cannulae. FDA believes that

clinical performance data could adequately characterize adverse events observed during clinical use in the intended population in order to inform FDA and therefore provide a reasonable assurance of safety and effectiveness.

Table 1 shows how FDA believes that the risks to health identified and listed in this document can be mitigated by the special controls.

TABLE 1—HEALTH RISKS AND MITIGATION MEASURES FOR IMPLANTED BLOOD ACCESS DEVICES

Identified risk	Mitigation measures
Thrombosis in patient and catheter	Performance testing. Labeling. Sterility. Clinical performance testing (devices inserted into artery, e.g., A–V shunt cannulae).
Adverse tissue reaction	Biocompatibility. Sterility. Expiration date testing. Labeling (with inclusion of Warning Statement for anaphylaxis for devices with coatings or additives). Materials characterization (devices with coatings or additives).
Infection and pyrogen reactions	Performance testing. Clinical performance testing (fully subcutaneous port-catheter devices). Sterility. Expiration date testing. Labeling.
Device failure	Performance testing. Expiration date testing. Labeling.
Cardiac arrhythmia, hemorrhage, embolism, nerve injury, or vessel perforation.	Performance testing. Labeling. Clinical performance testing (devices inserted into artery, e.g., A–V shunt cannulae).
Hemolysis	Performance testing. Labeling.
Accidental withdrawal or device migration	Biocompatibility. Performance testing. Clinical performance testing (devices inserted into artery, e.g., A–V shunt cannulae). Labeling.
Vascular access steal syndrome associated with devices inserted into the artery and vein.	Labeling. Clinical performance testing (devices inserted into artery, e.g., A–V shunt cannulae).

IV. The Final Order

Under section 513(e) of the FD&C Act, FDA is adopting its findings, as published in the preamble to the June 28, 2013, proposed order. FDA has made revisions in this final order in response to the comments received (see section II) and the deliberations of the Panel (see section III). As published in the proposed order, FDA is issuing this final order to reclassify implanted blood access devices from class III to class II and establish special controls by revising § 876.5540 (21 CFR 876.5540). The identification for § 876.5540(a)(1) has been revised to provide a more accurate description of devices in this classification regulation.

In response to the input of the Panel, FDA also made refinements to the proposed special controls as described previously. FDA added new special controls requiring clinical performance data for the fully subcutaneous port-catheter devices and the A–V shunt cannulae. Additionally, FDA updated the special controls for labeling and updated special controls for implanted blood access devices with coatings.

Following the effective date of this final order, firms submitting a premarket notification (510(k)) for an implanted blood access device will need either to (1) comply with the particular mitigation measures set forth in the codified special controls or (2) use alternative mitigation measures, but demonstrate to the Agency's satisfaction that those alternative measures identified by the firm will provide at least an equivalent assurance of safety and effectiveness.

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the FD&C Act if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the devices. FDA has determined that premarket notification is necessary to provide reasonable assurance of safety and effectiveness of implanted blood access devices, and therefore, this device type is not exempt from premarket notification requirements.

V. Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action 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.

VI. Paperwork Reduction Act of 1995

This final order refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120; and the collections of information under 21 CFR part 801 have been approved under OMB control number 0910–0485.

VII. Codification of Orders

Prior to the amendments by FDASIA, section 513(e) of the FD&C Act provided for FDA to issue regulations to reclassify devices. Although section 513(e) as amended requires FDA to issue final orders rather than regulations, FDASIA also provides for FDA to revoke previously issued regulations by order. FDA will continue to codify classifications and reclassifications in the Code of Federal Regulations. Changes resulting from final orders will appear in the CFR as changes to codified classification determinations or as newly codified orders. Therefore, under section 513(e)(1)(A)(i), as amended by FDASIA, in this final order, we are revoking the requirements in § 876.5540(b)(1) related to the classification of implanted blood access devices as class III devices and codifying the reclassification of implanted blood access devices into class II (special controls).

VIII. References

The following references have been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 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 we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. Transcript of the June 27, 2013, meeting of the Gastroenterology and Urology Devices Panel (available at: *http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/MedicalDevices/MedicalDevicesAdvisoryCommittee/Gastroenterology-UrologyDevicesPanel/UCM362271.pdf*).
2. FDA Executive Summary prepared for the June 27, 2013, meeting of the Gastroenterology and Urology Devices Panel (available at: *http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/MedicalDevices/MedicalDevicesAdvisoryCommittee/Gastroenterology-UrologyDevicesPanel/UCM358369.pdf*).

List of Subjects in 21 CFR Part 876

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 876 is amended as follows:

PART 876—GASTROENTEROLOGY–UROLOGY DEVICES

■ 1. The authority citation for 21 CFR part 876 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Amend § 876.5540 by revising paragraphs (a)(1) and (b)(1) and by removing paragraph (c) to read as follows:

§ 876.5540 Blood access device and accessories.

(a) * * *

(1) The implanted blood access device is a prescription device and consists of various flexible or rigid tubes, such as catheters, or cannulae, which are surgically implanted in appropriate blood vessels, may come through the skin, and are intended to remain in the body for 30 days or more. This generic type of device includes various catheters, shunts, and connectors specifically designed to provide access to blood. Examples include single and double lumen catheters with cuff(s), fully subcutaneous port-catheter systems, and A–V shunt cannulae (with vessel tips). The implanted blood access device may also contain coatings or additives which may provide additional functionality to the device.

* * * * *

(b) *Classification.* (1) Class II (special controls) for the implanted blood access device. The special controls for this device are:

(i) Components of the device that come into human contact must be demonstrated to be biocompatible. Material names and specific designation numbers must be provided.

(ii) Performance data must demonstrate that the device performs as intended under anticipated conditions of use. The following performance characteristics must be tested:

(A) Pressure versus flow rates for both arterial and venous lumens, from the minimum flow rate to the maximum flow rate in 100 milliliter per minute increments, must be established. The fluid and its viscosity used during testing must be stated.

(B) Recirculation rates for both forward and reverse flow configurations must be established, along with the protocol used to perform the assay, which must be provided.

(C) Priming volumes must be established.

(D) Tensile testing of joints and materials must be conducted. The minimum acceptance criteria must be adequate for its intended use.

(E) Air leakage testing and liquid leakage testing must be conducted.

(F) Testing of the repeated clamping of the extensions of the catheter that simulates use over the life of the device must be conducted, and retested for leakage.

(G) Mechanical hemolysis testing must be conducted for new or altered device designs that affect the blood flow pattern.

(H) Chemical tolerance of the device to repeated exposure to commonly used disinfection agents must be established.

(iii) Performance data must demonstrate the sterility of the device.

(iv) Performance data must support the shelf life of the device for continued sterility, package integrity, and functionality over the requested shelf life that must include tensile, repeated clamping, and leakage testing.

(v) Labeling of implanted blood access devices for hemodialysis must include the following:

(A) Labeling must provide arterial and venous pressure versus flow rates, either in tabular or graphical format. The fluid and its viscosity used during testing must be stated.

(B) Labeling must specify the forward and reverse recirculation rates.

(C) Labeling must provide the arterial and venous priming volumes.

(D) Labeling must specify an expiration date.

(E) Labeling must identify any disinfecting agents that cannot be used to clean any components of the device.

(F) Any contraindicated disinfecting agents due to material incompatibility must be identified by printing a warning on the catheter. Alternatively, contraindicated disinfecting agents must be identified by a label affixed to the patient's medical record and with written instructions provided directly to the patient.

(G) Labeling must include a patient implant card.

(H) The labeling must contain comprehensive instructions for the following:

(*1*) Preparation and insertion of the device, including recommended site of insertion, method of insertion, and a reference on the proper location for tip placement;

(*2*) Proper care and maintenance of the device and device exit site;

(*3*) Removal of the device;

(*4*) Anticoagulation;

(*5*) Management of obstruction and thrombus formation; and

(*6*) Qualifications for clinical providers performing the insertion, maintenance, and removal of the devices.

(vi) In addition to Special Controls in paragraphs (b)(1)(i) through (v) of this section, implanted blood access devices

that include subcutaneous ports must include the following:

(A) Labeling must include the recommended type of needle for access as well as detailed instructions for care and maintenance of the port, subcutaneous pocket, and skin overlying the port.

(B) Performance testing must include results on repeated use of the ports that simulates use over the intended life of the device.

(C) Clinical performance testing must demonstrate safe and effective use and capture any adverse events observed during clinical use.

(vii) In addition to Special Controls in paragraphs (b)(1)(i) through (v) of this section, implanted blood access devices with coatings or additives must include the following:

(A) A description and material characterization of the coating or additive material, the purpose of the coating or additive, duration of effectiveness, and how and where the coating is applied.

(B) An identification in the labeling of any coatings or additives and a summary of the results of performance testing for any coating or material with special characteristics, such as decreased thrombus formation or antimicrobial properties.

(C) A Warning Statement in the labeling for potential allergic reactions including anaphylaxis if the coating or additive contains known allergens.

(D) Performance data must demonstrate efficacy of the coating or additive and the duration of effectiveness.

(viii) The following must be included for A–V shunt cannulae (with vessel tips):

(A) The device must comply with Special Controls in paragraphs (b)(1)(i) through (v) of this section with the exception of paragraphs (b)(1)(ii)(B), (b)(1)(ii)(C), (b)(1)(v)(B), and (b)(1)(v)(C), which do not apply.

(B) Labeling must include Warning Statements to address the potential for vascular access steal syndrome, arterial stenosis, arterial thrombosis, and hemorrhage including exsanguination given that the device accesses the arterial circulation.

(C) Clinical performance testing must demonstrate safe and effective use and capture any adverse events observed during clinical use.

(2) Class II (performance standards) for the nonimplanted blood access device.

(3) Class II (performance standards) for accessories for both the implanted and the nonimplanted blood access devices not listed in paragraph (b)(4) of this section.

(4) Class I for the cannula clamp, disconnect forceps, crimp plier, tube plier, crimp ring, and joint ring, accessories for both the implanted and nonimplanted blood access device. The devices subject to this paragraph (b)(4) are exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 876.9.

Dated: July 18, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–17477 Filed 7–24–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF STATE

22 CFR Part 13

[Public Notice: 8808]

RIN 1400–AD61

Personnel; Changes in Statutory Authority; Technical Corrections; Liability for Neglect of Duty or for Malfeasance Generally; Repeal of Regulation

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is repealing the regulation that provides for personal liability for Consular Officers in cases of malfeasance, and provides updates to citations of authorities. The deleted regulation, which was promulgated in 1957 and last amended in 1984, is no longer authorized by statute.

DATES: This rule is effective July 25, 2014.

FOR FURTHER INFORMATION CONTACT: Daniel Klimow, Office of Legal Affairs, Overseas Citizen Services, U.S. Department of State, 2201 C Street NW., SA–17, Washington, DC 20520, (202) 485–6224, *klimowda1@state.gov.*

SUPPLEMENTARY INFORMATION: This rule removes 22 CFR 13.3 from the Code of Federal Regulations. 22 CFR 13.3 provides that consular officers who willfully neglect or fail to perform any duty imposed on them by law shall be found liable to all persons injured by any such neglect, or omission, malfeasance, abuse, or corrupt conduct. 22 CFR 13.3 also provides for criminal penalties for consular officers found guilty for malfeasance and corrupt conduct in office. The Department is removing 22 CFR 13.3 because the rule's authorizing statute has been repealed.

22 CFR 13.3 implemented *22 U.S.C. 1199,* which explicitly provided for civil and criminal liability against consular officers for willful neglect or omission in the performance of their assigned duties. Section 1199 was repealed in 1977, and the legislative history for the repeal of Section 1199 reflected a desire by Congress to treat consular officers the same as other federal employees with respect to personal liability for acts taken within the scope of their official duties. Foreign Relations Authorization Act, Fiscal Year 1978, Public Law 95–105, title I, section 111, 91 Stat. 848 (1977); H.R. Rep. No. 95–231, at 17, 21 (1977); H.R. Rep. No. 95–537 at 33 (1977) (Conf. Rep.).

22 CFR 13.3 was also promulgated under the authority of 22 U.S.C. 2658 and *22 U.S.C. 3926.* However, 22 U.S.C. 2658 was repealed in 1994. 22 U.S.C. 3926 is still in effect and is a general authorization for the Secretary of State to prescribe such regulations as are necessary to administer the foreign service in conformity with federal law; however, it does not grant the Secretary specific authority to provide for the civil and criminal liability of consular officers in 22 CFR 13.3.

Finally, this rule updates all of the statutory authorities cited in Part 13, and updates one regulatory reference (from Section 22.4 to Section 22.6).

Regulatory Analysis and Notices

Administrative Procedure Act

This action is being taken as a final rule pursuant to the ''good cause'' provision of 5 U.S.C. 553(b). It is the position of the Department that notice and comment are not necessary in light of the fact that 22 CFR 13.3 implements a repealed statute; thus, it is no longer authorized. In addition, there were only technical edits to the remaining three sections of Part 13. This rulemaking is effective immediately in accordance with 5 U.S.C. 553(d)(3). Finally, this rulemaking is exempt from the notice and comment pursuant to 5 U.S.C. 553(a)(2), as it is a matter relating to agency management of personnel.

Regulatory Flexibility Act

The Department hereby certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 605(b).

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing

any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This rulemaking will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

Executive Orders 12866 and 13563

The Department of State has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and has determined that the benefits of this rule seeking repeal of 22 CFR 13.3 and updates to Part 13 justify its costs. The Department does not consider this rule to be a significant rule as defined by E.O. 12866. The Department has considered this rule in light of Executive Order 13563, and affirms that this regulation is consistent with the guidance therein.

Federalism

This 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. Nor will the rule have federalism implications warranting the application of Executive Orders 12372 and 13132.

Civil Justice Reform

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

Consultations With Tribal Governments

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

Paperwork Reduction Act

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 13

Consular services, Crime, Government employees.

Accordingly, 22 CFR part 13 is amended as follows:

PART 13—PERSONNEL

■ 1. The authority citation for Part 13 is revised to read as follows:

Authority: 22 U.S.C. 2651a; 22 U.S.C. 4198–4199, 4209, and 4217–4218.

§ 13.1 [Amended]

■ 2. Section 13.1 is amended by removing ''(22 U.S.C. 1189)'' and adding ''(22 U.S.C. 4209)'' in its place, by removing ''§ 22.4'' and adding ''§ 22.6'' in its place in the Note, and by removing the sectional authority citation.

§ 13.2 [Amended]

■ 3. Section 13.2 is amended by removing ''(22 U.S.C. 1198)'' and adding ''(22 U.S.C. 4217'') in its place, and by removing ''(22 U.S.C. 1178 and 1179)'' adding ''(22 U.S.C. 4198 and 4199)'' in its place, and by removing the sectional authority citation.

§ 13.3 [Removed and Reserved]

■ 4. Section 13.3 is removed and reserved.

§ 13.4 [Amended]

■ 5. Section 13.4 is amended by removing ''(22 U.S.C. 1200)'' and adding ''(22 U.S.C. 4218)'' in its place, and by removing the sectional authority citation.

Dated: July 18, 2014.

Michele T. Bond,

Acting Assistant Secretary, Bureau of Consular Affairs, U.S. Department of State.

[FR Doc. 2014–17428 Filed 7–24–14; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 876

[Docket No. FDA–2014–M–0966]

Medical Devices; Gastroenterology-Urology Devices; Classification of the Implantable Transprostatic Tissue Retractor System

AGENCY: Food and Drug Administration, HHS.

ACTION: Final Order.

SUMMARY: The Food and Drug Administration (FDA) is classifying the implantable transprostatic tissue retractor system into class II (special controls). The special controls that will apply to the device are identified in this order and will be part of the codified language. The Agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

DATES: This order is effective August 25, 2014. The classification was applicable beginning September 13, 2013.

FOR FURTHER INFORMATION CONTACT: Mark Kreitz, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G270, Silver Spring, MD 20993–0002, 301–796–7019.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976 (the date of enactment of the Medical Device Amendments of 1976), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of the regulations.

Section 513(f)(2) of the FD&C Act, as amended by section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), provides two procedures by which a person may request FDA to classify a device under the criteria set forth in section 513(a)(1). Under the first procedure, the person submits a premarket notification under section 510(k) of the FD&C Act for a device that has not previously been classified and, within 30 days of receiving an order classifying the device into class III under section 513(f)(1) of the FD&C Act, the person requests a classification under section 513(f)(2). Under the second procedure, rather than first submitting a premarket notification under section 510(k) of the FD&C Act and then a request for classification under the first procedure, the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence and requests a classification under section 513(f)(2) of the FD&C Act. If the person submits a request to classify the device under this second procedure, FDA may decline to

undertake the classification request if FDA identifies a legally marketed device that could provide a reasonable basis for review of substantial equivalence with the device, or if FDA determines that the device submitted is not of ''low-moderate risk'', or that general controls would be inadequate to control the risks and special controls to mitigate the risks cannot be developed.

In response to a request to classify a device under either procedure provided by section 513(f)(2) of the FD&C Act, FDA will classify the device by written order within 120 days. This classification will be the initial classification of the device.

On March 7, 2013, NeoTract, Inc., submitted a request for classification of the UroLift System under section 513(f)(2) of the FD&C Act. The manufacturer recommended that the device be classified into class II (Ref. 1).

In accordance with section 513(f)(2) of the FD&C Act, FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act. FDA classifies devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the de novo request, FDA determined that the device can be classified into class II with the establishment of special controls. FDA believes these special controls, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on September 13, 2013, FDA issued an order to the requestor classifying the device into class II. FDA is codifying the classification of the device by adding § 876.5530 (21 CFR 876.5530).

Following the effective date of this final classification administrative order, any firm submitting a premarket notification (510(k)) for an implantable transprostatic tissue retractor system will need to comply with the special controls named in the final administrative order.

The device is assigned the generic name implantable transprostatic tissue retractor system, and it is identified as a prescription use device that consists of a delivery device and implant. The delivery device is inserted transurethrally and deploys the implant through the prostate. It is designed to increase prostatic urethral patency by providing prostate lobe tissue retraction while preserving the potential for future prostate procedures and is intended for the treatment of symptoms due to urinary outflow obstruction secondary to benign prostatic hyperplasia in men.

FDA has identified the following risks to health associated with this type of device and the measures required to mitigate these risks:

TABLE 1—IMPLANTABLE TRANPROSTATIC TISSUE RETRACTOR SYSTEM RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measure
Adverse Tissue Reaction to the Device	Biocompatibility Testing. In Vivo Testing.
Infection Due to Presence of Foreign Body	Sterilization Validation. Labeling (including expiration dating). Shelf Life Testing.
Mitigation of Implanted Device	In Vivo Testing. Magnetic Resonance Compatibility Testing.
Failure to Deploy Device or Misdeployment	Non-clinical Testing. In Vivo Testing. Labeling.
Failure of Implanted Device	Non-clinical Testing (Mechanical). Non-clinical Testing (Resistance to Degradation). Shelf Life Testing. In Vivo Testing. Labeling.
Improperly Placed Implants	In Vivo Testing. Labeling.
Occurrence of Genito-Urinary Adverse Events	In Vivo Testing. Labeling.
Presence of Implants Adversly Affects Subsequent Interventions	Non-clinical Testing In Vivo Testing. Labeling.

FDA believes that the following special controls, in addition to the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness:

- The elements of the device that may contact the patient must be demonstrated to be biocompatible.
- Performance data must demonstrate the sterility of the patient-contacting components of the device.
- Performance data must support shelf life by demonstrating continued sterility of the device (of the patient-contacting components), package integrity, and device functionality over the requested shelf life.
- Non-clinical testing data must demonstrate that the device performs as intended under anticipated conditions of use. The following performance characteristics must be tested:
  - Deployment testing must be conducted;
  - mechanical strength must be conducted; and
  - resistance-to-degradation testing must be conducted.
- Non-clinical testing must evaluate the compatibility of the device in a magnetic resonance environment.
- In vivo testing must demonstrate safe and effective use, assess the impact of the implants on the ability to perform subsequent treatments, document the adverse event profile associated with clinical use, and demonstrate that the device performs as intended under anticipated conditions of use. The following performance characteristics must be tested:

- Deployment testing must be conducted and
- implant migration must be conducted.

• Labeling must bear all information required for safe and effective use of the device, and must include:
- Specific instructions, warnings, cautions, limitations, and the clinical training needed for the safe use of the device;
- information on the patient population for which the device has been demonstrated to be effective;
- a detailed summary of the device technical parameters;
- information on how the device operates and the typical course of treatment;
- an expiration date/shelf life; and
- a detailed summary of the device- and procedure-related complications or adverse events pertinent to use of the device.

Implantable transprostatic tissue retractor systems are prescription devices restricted to patient use only upon the authorization of a practitioner licensed by law to administer or use the device. (Proposed § 876.5530(a); see section 520(e) of the FD&C Act (21 U.S.C. 360j(e)) and § 801.109 (21 CFR 801.109) (*Prescription devices.*)) Prescription-use restrictions are a type of general controls as defined in section 513(a)(1)(A)(i) of the FD&C Act.

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the FD&C Act if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device. Therefore, this device type is not exempt from premarket notification requirements. Persons who intend to market this type of device must submit to FDA a premarket notification prior to marketing the device, which contains information about the implantable transprostatic tissue retractor system they intend to market.

II. Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action 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.

III. Paperwork Reduction Act of 1995

This final administrative order establishes special controls that refer to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 807, subpart E, regarding premarket notification submissions have been approved under OMB control number 0910–0120, and the collections of information in part 801, regarding labeling, have been approved under OMB control number 0910–0485.

IV. Reference

The following reference has been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and is available electronically at *http://www.regulations.gov*.

1. K130651: De Novo Request per 513(f)(2) of the Federal Food, Drug, and Cosmetic Act From NeoTract, Inc., dated March 7, 2013.

List of Subjects in 21 CFR Part 876

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 876 is amended as follows:

PART 876—GASTOENTEROLOGY–UROLOGY DEVICES

■ 1. The authority citation for 21 CFR part 876 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Add § 876.5530 to subpart F to read as follows:

§ 876.5530 Implantable transprostatic tissue retractor system.

(a) *Identification.* An implantable transprostatic tissue retractor system is a prescription use device that consists of a delivery device and implant. The delivery device is inserted transurethrally and deploys the implant through the prostate. It is designed to increase prostatic urethral patency by providing prostate lobe tissue retraction while preserving the potential for future prostate procedures and is intended for the treatment of symptoms due to urinary outflow obstruction secondary to benign prostatic hyperplasia in men.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) The elements of the device that may contact the patient must be demonstrated to be biocompatible.

(2) Performance data must demonstrate the sterility of the patient-contacting components of the device.

(3) Performance data must support shelf life by demonstrating continued sterility of the device (of the patient-contacting components), package integrity, and device functionality over the requested shelf life.

(4) Non-clinical testing data must demonstrate that the device performs as intended under anticipated conditions of use. The following performance characteristics must be tested:

(i) Deployment testing must be conducted.

(ii) Mechanical strength must be conducted.

(iii) Resistance-to-degradation testing must be conducted.

(5) Non-clinical testing must evaluate the compatibility of the device in a magnetic resonance environment.

(6) In vivo testing must demonstrate safe and effective use, assess the impact of the implants on the ability to perform subsequent treatments, document the adverse event profile associated with clinical use, and demonstrate that the device performs as intended under anticipated conditions of use. The following performance characteristics must be tested:

(i) Deployment testing must be conducted.

(ii) Implant migration must be conducted.

(7) Labeling must bear all information required for safe and effective use of the device, and must include:

(i) Specific instructions, warnings, cautions, limitations, and the clinical training needed for the safe use of the device.

(ii) Information on the patient population for which the device has been demonstrated to be effective.

(iii) A detailed summary of the device technical parameters.

(iv) Information on how the device operates and the typical course of treatment.

(v) An expiration date/shelf life.

(vi) A detailed summary of the device- and procedure-related complications or adverse events pertinent to use of the device.

Dated: July 22, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–17542 Filed 7–24–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0582]

Drawbridge Operation Regulation; Lake Washington, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Evergreen Point Floating Bridge (State Route 520) across Lake Washington at Seattle, WA. This deviation is necessary to accommodate the Seafair Air Show practice and event. This deviation allows the bridge to remain in the closed position to help minimize traffic congestion during the event.

DATES: This deviation is effective from 9:45 a.m. on July 31, 2014 to 2:40 p.m. August 3, 2014.

ADDRESSES: The docket for this deviation, [USCG–2014–0582] is available at *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 deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *Steven.M.Fischer3@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Washington State Department of Transportation has requested that the draw span of the Evergreen Point Floating Bridge (State Route 520) remain closed to vessel traffic during the Seafair Airshow practice and event. The Intersate-90 floating bridge will be closed to road traffic during this time, resulting in heavier than normal vehicle traffic on the Evergreen Point Floating Bridge. The Evergreen Point Floating Bridge will remain closed to vessel traffic to help with vehicular traffic congestion.

The Evergreen Point Floating Bridge provides three navigational openings for vessel passage, the movable floating span, subject to this closure, and two fixed navigational openings; one on the east end of the bridge and one on the west end. The fixed navigational opening on the east end of the bridge provides a horizontal clearance of 150 feet and a vertical clearance of 57 feet. The opening on the west end of the bridge provides a horizontal clearance of 170 feet and a vertical clearance of 45 feet.

Vessels which do not require a bridge opening may continue to transit beneath the bridges during this closure period. Under normal conditions, during this time frame, the bridge operates in accordance with 33 CFR 117.1049 which states the bridge shall open on signal if at least two hours notice is given. The deviation allows the floating draw span of the Evergreen Point Floating Bridge on Lake Washington to remain in the closed position and need not open for maritime traffic from 9:45 a.m. to 12 p.m. and 1:15 p.m. to 2:40 p.m. on July 31, 2014, and 12:15 p.m. to 2:40 p.m. on August 1st, 2014, and 12:15 p.m. to 2:40 p.m. on August 2nd, 2014, and 12:15 p.m. to 2:40 p.m. on August 3rd, 2014. The bridge shall operate in accordance to 33 CFR 117.1049 at all other times. Waterway usage on the Lake Washington Ship ranges from commercial tug and barge to small pleasure craft. Vessels able to pass through the bridge in the closed positions may do so at anytime. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 15, 2014.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2014–17597 Filed 7–24–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–0705]

RIN 1625 AA00; 1625–AA11

Regulated Navigation Area and Safety Zone: Tappan Zee Bridge Construction Project, Hudson River; South Nyack and Tarrytown, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comments.

SUMMARY: The Coast Guard is revising the current regulated navigation area (RNA) for the navigable waters of the Hudson River surrounding the Tappan Zee Bridge. First, the Coast Guard is establishing a new safety zone surrounding commercial mooring buoys installed for the ongoing Tappan Zee Bridge replacement project. The safety zone will prohibit all vessel traffic that could pose an imminent hazard to persons and vessels that will be transiting to and from the bridge site and maneuvering in close quarters between other construction vessels and large mooring buoys. Second, the Coast Guard is expanding the size of the current RNA and designating two areas within the RNA, the Eastern RNA and the Western RNA, based upon their respective locations in relation to the new safety zone. This rule is necessary to provide for the safety of life in the RNA and safety zone during the construction of the New NY Bridge and demolition of the existing Tappan Zee Bridge.

DATES: This rule is effective without actual notice from July 25, 2014 until December 31, 2018. For the purposes of enforcement, actual notice will be used from the date the rule was signed, July 3, 2014 until July 25, 2014.

Comments and related material will be accepted and reviewed by the Coast Guard through September 23, 2014.

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG–2013–0705. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Open Docket Folder'' on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE.,

Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may submit comments, identified by docket number, using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* (202) 493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Craig Lapiejko, Waterways Management at Coast Guard First District, telephone 617–223–8351, email *craig.lapiejko@uscg.mil* or, Mr. Jeff Yunker, Coast Guard Sector New York Waterways Management Division, U.S. Coast Guard; telephone 718–354–4195, email *jeff.m.yunker@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

COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
NYSTA New York State Thruway Authority
RNA Regulated Navigation Area
TIR Temporary Interim Rule

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov*, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

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

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We currently do not plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. 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

On September 26, 2013, the Coast Guard published a temporary interim rule (TIR) establishing a regulated navigation area (RNA) at 33 CFR 165.T01–0705 for the Tappan Zee Bridge replacement project in that waterway (78 FR 59231). We received no comments on the September 26, 2013 TIR. No public meeting was requested, and none was held. Today's TIR revises the September 26, 2013 RNA on the Hudson River due to changed circumstances in the construction project discussed below.

The Coast Guard is issuing this TIR without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be impracticable and contrary to the public interest. Construction on the Tappan Zee Bridge replacement project began on October 1, 2013. The construction project has grown to include the installation of 16 commercial mooring buoys and an increase in the number of construction vessels to 100 or more vessels. These changes present new safety hazards and risks. It would be impracticable to delay promulgating this rule, as the RNA and safety zone are necessary to protect the safety of both the construction crew and the waterway users operating in the vicinity of the bridge construction zone. A delay or cancellation of the currently ongoing bridge rehabilitation project in order to accommodate a full notice and comment period would delay necessary operations, result in increased costs, and delay the date when the bridge is expected to reopen for normal operations. For these reasons, the Coast Guard believes it is impracticable and

contrary to the public interest to delay this regulation. At any time, the Coast Guard may publish an amended rule if necessary to address public concerns.

For the same reasons mentioned above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

C. Basis and Purpose

Under the Ports and Waterways Safety Act, 33 U.S.C. 1221 et. seq., and Department of Homeland Security Delegation No. 0170.1, the Coast Guard has the authority to establish RNAs and safety zones.

This rule is prompted by the navigation safety situation created by the construction of the New NY Bridge to replace the existing Tappan Zee Bridge. Construction on the project began on October 1, 2013, and is expected to run through December 31, 2018.

The Coast Guard has discussed this project with the New York State Thruway Authority (NYSTA) and Tappan Zee Constructors, LLC, to determine whether the project can be completed without channel closures or waterway restrictions. While the majority of construction activities during the span of this project will not require waterway closures, there are certain tasks that can only be completed in the channel or surrounding installed commercial mooring buoys and will require closing the waterway. The construction of the bridge will be extremely complex and presents many safety hazards including overhead crane operations, overhead cutting operations, potential falling debris, construction vessels maneuvering and transiting between the bridge site and commercial mooring buoys installed upstream and downstream from the construction site, and barges positioned in the channel with a restricted ability to maneuver. In addition to regular construction activities, at present, NYSTA and Tappan Zee Constructors, LLC expect to request waterway closures of the Federal Channel between March 2015 and October 2016. The channel closures will be necessary during heavy lift operations conducted over the channel and are expected to be conducted during daylight hours. These closures will be closely coordinated with mariners in advance so they can alter their transit schedules. Mariners that may safely navigate outside the Federal channel would still be able to transit through the RNAs, during these heavy lift operations.

D. Discussion of the Interim Rule

The Coast Guard is revising the existing Regulated Navigation Area surrounding the Tappan Zee Bridge construction project to expand the size of the RNA to all waters of the Hudson River within 500 yards of the existing Tappan Zee Bridge. (The existing RNA includes all waters of the Hudson River within 200 yards south, and 300 yards north, of the existing Tappan Zee Bridge.) The expansion is necessary due to installation of 16 commercial mooring buoys, and the increase in the number of construction vessels operating within the RNA and safety zone to 100 or more vessels. Additionally, the RNA will be divided into the Western RNA and Eastern RNA, based upon their respective locations in relation to the safety zone. This is intended to reduce public confusion that may be created with establishing the NYSTA requested safety zone and Eastern and Western RNA areas in the same area of the Hudson River. As requested by the NYSTA, the RNA and safety zone would have overlapped and would have established different operating restrictions on vessels not involved with the project. This would have likely led to confusion among mariners when determining which regulations apply to them if they were within the area where the RNA and safety zone overlapped.

Additionally, the Coast Guard is establishing a new safety zone on the navigable waters of the Hudson River on the western side of the Hudson River, north and south of the Tappan Zee Bridge, NY. Entry into, anchoring, or movement within this safety zone is prohibited by all vessels not working on the Tappan Zee Bridge construction project. The safety zone surrounds 16 mooring buoys that are being installed for this project. These moorings will be used as a staging site for barges holding material used to build the New NY Bridge and demolish the existing Tappan Zee Bridge. During peak operations, 100 or more vessels may be within the RNAs, safety zone, or transiting to, or from, the RNAs and safety zone.

The Coast Guard is making these revisions to maintain safe navigation in the project area, and to prevent accidental or intentional damage to persons or property on the work site. The ongoing operations, increase in the number of construction vessels on site, and installation of the 16 mooring buoys within the RNA and safety zone, are by their nature, hazardous and pose risks both to recreational and commercial traffic as well as to the construction crew. In order to mitigate the inherent risks involved with the removal of a bridge, and installation of the New NY Bridge, it is necessary to control vessel movement through the area. The purpose of this TIR is to ensure the safety of waterway users, the public, and construction workers for the duration of the New NY Bridge construction and Tappan Zee Bridge demolition.

Heavy-lift operations are sensitive to water movement, and wake from passing vessels could pose significant risk of injury or death to construction workers. In order to minimize such unexpected or uncontrolled movement of water, any vessel transiting through the Western RNA must make a direct and expeditious passage. No vessel may stop, moor, anchor or loiter within the RNA at any time unless they are working on the bridge construction operations.

Similarly, any vessel transiting through the Eastern RNA must make a direct and expeditious passage. No vessel may stop, moor, anchor or loiter within the RNA at any time unless they are working on the bridge construction operations or they are anchoring within the special anchorage area codified in 33 CFR 110.60(c)(8) located on the eastern shoreline at Tarrytown, NY and within the boundaries of the Eastern RNA.

If the project is completed before December 31, 2018, the COTP will suspend enforcement of the Eastern or Western RNA and safety zone. The COTP will notify the affected segments of the public of any suspension of enforcement by appropriate means. Such means of notification could include, but would not be limited to, Broadcast Notice to Mariners and Local Notice to Mariners.

The COTP maintains a telephone line that is staffed 24 hours a day, seven days a week. The public can obtain information concerning enforcement of the regulated navigation area and safety zone by contacting the Coast Guard Sector New York Command Center at (718) 354–4353.

E. 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.

The Coast Guard determined that this rulemaking would not be a significant regulatory action for the following reasons: Vessel traffic would only be restricted from the Eastern RNA for limited durations. The Eastern RNA covers only a small portion of the navigable waterway which includes the Federal navigation channel. Furthermore, while the Federal navigation channel is closed, vessels that can safely navigate outside the Federal navigation channel would still be able to transit through the Western RNA or the portion of the Eastern RNA which does not encompass the Federal navigable channel.

Advance public notifications will also be made to local mariners through appropriate means, which may include but are not limited to, Local Notice to Mariners and 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 Coast Guard received no comments from the Small Business Administration on the September 26, 2013 TIR. 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 would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor or moor within the Eastern or Western RNA or safety zone.

The Eastern and Western RNA and safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The Eastern and Western RNAs and safety zone will be of limited size and any closures of the Federal navigation channel will be of short duration. Mariners that can safely navigate outside the Federal navigation channel would still be able to transit through the Western RNA and that portion of the Eastern RNA which does not encompass the Federal Restricted channel. Before the effective period of a waterway closure, advanced public notifications may be made to local mariners through appropriate means, which could include, but would not be limited to, Local Notice to Mariners, Broadcast Notice to Mariners, and the Boater Safety Information section of the project Web site at *http://www.newnybridge.com.* Individuals may also subscribe for email updates for the project in the ''contact us'' section of the project Web site.

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 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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ *2.* Revise § 165.T01–0174 to read as follows:

§ 165.T01–0174 Regulated Navigation Areas and Safety Zone Tappan Zee Bridge Construction Project, Hudson River; South Nyack and Tarrytown, NY.

(a) *Regulated Navigation Area Boundaries.* The following are regulated navigation areas:

(1) Western RNA: all waters bound by the following approximate positions: 41°04′39.16″ N, 073°55′00.68″ W on the western shoreline; thence to 41°04′28.34″ N, 073°54′47.18″ W; thence to 41°04′11.28″ N, 073°54′48.00″ W; thence to 41°03′57.26″ N, 073°54′40.73″ W; thence to 41°03′57.36″ N, 073°54′47.38″ W; thence to 41°03′58.66″ N, 073°54′56.14″ W; thence to 41°04′03.00″ N, 073°55′07.60″ W; thence to a point on the western shoreline at 41°04′06.69″ N, 073°55′14.10″ W; thence northerly along the shoreline to the point of origin (NAD 83).

(2) Eastern RNA: all waters bound by the following approximate positions: 41°04′21.96″ N, 073°52′03.25″ W on the eastern shoreline; thence to 41°04′26.27″ N, 073°52′19.82″ W; thence to 41°04′26.53″ N, 073°53′20.07″ W; thence to 41°03′56.92″ N, 073°53′18.84″ W; thence to 41°03′56.69″ N, 073°52′24.75″ W; thence to a point on the eastern shoreline at 41°03′46.91″ N, 073°52′05.89″ W; thence northerly along the shoreline to the point of origin (NAD 83).

(b) *Safety Zone Boundaries.* The following is a Safety Zone: all waters bound by the following approximate positions: 41°04′59.70″ N, 073°54′45.54″ W; thence to 41°05′00.18″ N, 073°53′21.48″ W; thence to 41°03′09.24″ N, 073°53′16.86″ W; thence to 41°03′07.08″ N, 073°54′14.70″ W; thence to 41°04′11.28″ N, 073°54′48.00″ W; thence to the point of origin (NAD 83).

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.10, 165.11, and 165.13, 165.20 and 165.23 apply.

(2) Any vessel transiting through the Western RNA must make a direct and expeditious passage. No vessel may stop, moor, anchor or loiter within the RNA at any time unless they are working on the bridge construction operations.

(3) Any vessel transiting through the Eastern RNA must make a direct and expeditious passage. No vessel may stop, moor, anchor or loiter within the RNA at any time unless they are working on the bridge construction operations or they are transiting to, or from, the special anchorage area codified in 33 CFR 110.60(c)(8) located on the eastern shoreline at Tarrytown, NY and within the boundaries of the RNA.

(4) Entry and movement within the Eastern RNA or Western RNA is subject to a ''Slow-No Wake'' speed limit. All vessels may not produce a wake and may not attain speeds greater than five knots unless a higher minimum speed is necessary to maintain steerageway. All vessels must proceed through the Eastern RNA and Western RNA with caution and operate in such a manner as to produce no wake.

(5) Entry into, anchoring, loitering, or movement within the Safety Zone is prohibited unless the vessel is working on the bridge construction operations or authorized by the Captain of the Port New York (COTP) or his designated representative.

(6) All persons and vessels must comply with all orders and directions from the COTP or the COTP's designated representative. The ''designated representative'' of the COTP is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on the COTP's behalf. The designated representative may be on a Coast Guard vessel or New York State Police, Westchester County Police, Rockland County Police, or other designated craft; or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(7) Upon being hailed by a Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(8) For the purpose of this regulation, the Federal navigation channel, located in the Eastern RNA is marked by the red and green navigation lights on the existing Tappan Zee Bridge, and the New NY Bridge. As the project progresses, the Federal navigation channel will be intermittently closed, or partially restricted, to all vessel transits. While the Federal navigation channel is closed, vessels that can safely navigate outside the Federal navigation channel would still be able to transit through the Eastern RNA. These closures or partial restrictions are tentatively scheduled to take place between March 2015 and October 2016. The COTP will cause a notice of the channel closure or restrictions by appropriate means to the affected segments of the public. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners.

(9) Notwithstanding anything contained in this section, the Rules of the Road (33 CFR part 84—Subchapter E, inland navigational rules) are still in

effect and must be strictly adhered to at all times.

(d) *Enforcement periods.* This regulation will be enforced 24 hours a day from 5:00 a.m. on July 3, 2014 until 11:59 p.m. on December 31, 2018.

(1) Notice of suspension of enforcement: If enforcement is suspended, the COTP will cause a notice of the suspension of enforcement by appropriate means to the affected segments of the public. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. Such notification will include the date and time that enforcement will be suspended as well as the date and time that enforcement will resume.

(2) Violations of this regulation may be reported to the COTP at 718–354–4353 or on VHF-Channel 16.

Dated: July 3, 2014.

L.L. Fagan,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2014–17600 Filed 7–24–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0062]

Safety Zone; Fleet Week Maritime Festival, Pier 66, Elliott Bay; Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard announces that the Fleet Week Maritime Festival's Pier 66 Safety Zone in Elliott Bay, WA will be in effect from 8 a.m. until 8 p.m. on July 30, 2014. In addition to enforcing the safety zone during the parade of ships and aerial demonstration, the safety zone will only be enforced thirty minutes prior and thirty minutes following the conclusion of the parade of ships and aerial demonstration. This action is necessary to promote safety on navigable waters. During the enforcement period, entry into, transit through, mooring, or anchoring within this zone is prohibited unless authorized by the Captain of the Port, Puget Sound or his designated representative.

DATES: The regulations in 33 CFR 165.1330 will be in effect from 8 a.m. until 8 p.m. on July 30, 2014.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email LTJG Johnny Zeng, Sector Puget Sound Waterways Management Division, Coast Guard; telephone (206) 217–6175, *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The safety zone for the Fleet Week Maritime Festival in 33 CFR 165.1330 will be in effect from 8 a.m. until 8 p.m. on July 30, 2014. In addition to enforcing the safety zone during the parade of ships and aerial demonstration, the safety zone will only be enforced thirty minutes prior and thirty minutes following the conclusion of the parade of ships and aerial demonstration.

In accordance with the general regulations in 33 CFR Part 165, Subpart C, no vessel operator may enter, transit, moor, or anchor within this safety zone thirty minutes prior to the beginning, during and thirty minutes following the conclusion of the Parade of Ships. For the purpose of this rule, the Parade of Ships includes both the pass and review of the ships near Pier 66 and the aerial demonstrations immediately following the pass and review. The Captain of the Port may be assisted by other federal, state, or local agencies as needed.

In order to transit through this safety zone, authorization must be granted by the Captain of the Port, Puget Sound or his designated representative. All vessel operators desiring entry into this safety zone may request authorization by contacting either the on-scene U.S. Coast Guard patrol craft on VHF Ch 13 or Ch 16, or Coast Guard Sector Puget Sound Joint Harbor Operations Center (JHOC) via telephone at (206) 217–6002. Requests shall indicate the reason why movement within the safety zone is necessary and the vessel's arrival and/or departure facility name, pier and/or berth. Vessel operators granted permission to enter this safety zone will be escorted by the on-scene patrol until no longer within the safety zone.

This notice is issued under authority of 33 CFR 165.1330 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advanced notification of the safety zone via the Local Notice to Mariners and marine information broadcasts. If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, they may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: July 16, 2014.

M. W. Raymond,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2014–17603 Filed 7–24–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–0471]

RIN 1625–AA00

Safety Zone; Belt Parkway Bridge Construction, Gerritsen Inlet; Brooklyn, NY—Correction

AGENCY: Coast Guard, DHS.

ACTION: Correcting amendments.

SUMMARY: On May 12, 2014, the Coast Guard published in the **Federal Register** (79 FR 26848) a temporary interim rule and request for comments establishing a safety zone on the navigable waters of Gerritsen Inlet surrounding the Belt Parkway Bridge. Inadvertently, this rule included an error in one of the coordinates of the safety zone. This document corrects that error.

DATES: This rule is effective without actual notice from July 25, 2014 until September 30, 2017. For the purposes of enforcement, actual notice will be used from the date the rule was signed, April 30, 2014, until July 25, 2014.

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG–2013–0471. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Open Docket Folder'' on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may submit comments, identified by docket number, using any one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov.

Fax: (202) 493–2251.

Mail or Delivery: Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–

0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Jeff Yunker, Coast Guard Sector New York, Waterways Management Division; telephone 718–354–4195, email *jeff.m.yunker@uscg.mil* or Chief Craig Lapiejko, Coast Guard First District Waterways Management Branch, telephone 617–223–8351, email *craig.d.lapiejko@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:

Background

On May 12, 2014, the Coast Guard published in the **Federal Register** a temporary interim rule and request for comments establishing a safety zone within 300 feet of the Belt Parkway Bridge on the navigable waters of Gerritsen Inlet (79 FR 26848).

Need for Correction

As stated in the **Federal Register** publication of the temporary interim rule and request for comments, the safety zone included all navigable waters of Gerritsen Inlet: Southeast of a line from 40°35′09.46″ N, 073°54′53.92″ W to 40°35′10.0″ N, 073°54′44.5″ W. However, the correct coordinates are Southeast of a line from 40°35′09.46″ N, 073°54′53.92″ W to 40°35′15.60″ N, 073°54′42.07″ W.

Upon publication of the temporary interim rule and request for comments in the **Federal Register**, the Coast Guard became aware of the errors in the text relating to the coordinates. This notice corrects those errors by publishing the correct coordinates of the safety zone.

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and recordkeeping requirements, waterways.

Accordingly, 33 CFR part 165 is corrected by making the following correcting amendments:

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 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. Revise paragraph (a) of § 165.T01–0471 to read as follows:

§ 165.T01–0471 Safety Zone; Belt Parkway Bridge Construction, Gerritsen Inlet, Brooklyn, NY.

(a) *Location.* The following area is a safety zone: All navigable waters of Gerritsen Inlet: Southeast of a line from 40°35′09.46″ N, 073°54′53.92″ W to 40°35′15.60″ N, 073°54′42.07″ W and Northwest of a line from 40°35′04.88″ N, 073°54′45.43″ W to 40°35′10.34″ N, 073°54′35.71″ W (NAD 83).

* * * * *

Dated: July 1, 2014.

G. Loebl,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2014–17609 Filed 7–24–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2014–0563]

Safety Zone; Fireworks Events in the Captain of the Port New York Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce safety zones in the Captain of the Port (COTP) New York Zone on specified dates and times. These actions are necessary to ensure the safety of vessels and spectators from hazards associated with fireworks displays. During the enforcement periods, no person or vessel may enter the safety zones without permission from the COTP.

DATES: The regulations for the marine event listed in Table 1 to 33 CFR 165.160(4.4) will be enforced on October 5, 2014 from 6:50 p.m. through 8:10 p.m.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Lieutenant Kristopher Kesting, Coast Guard; telephone 718–354–4154, email *Kristopher.R.Kesting@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone listed in Table 1 to 33 CFR 165.160(4.4) on the specified date and time as indicated below. The regulation covering this safety zone was published in the **Federal Register** on November 9, 2011 (76 FR 69614).

Association of Indians in America Fireworks, Seaport, East River Safety Zone, 33 CFR 165.160(4.4).	• Launch site: All waters of the East River south of the Brooklyn Bridge and north of a line drawn from the southwest corner of Pier 3, Brooklyn, to the southeast corner of Pier 6, Manhattan. • Date: October 5, 2014. • Time: 6:50 p.m.–8:10 p.m.

Under the provisions of 33 CFR 165.160, a vessel may not enter a safety zone unless given express permission from the COTP or a designated representative. Spectator vessels may transit outside a safety zone but may not anchor, block, loiter in, or impede the transit of other vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.160(a) and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide mariners with advanced notification of enforcement periods via the Local Notice to Mariners and marine information broadcasts. If the COTP determines that a safety zone need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the safety zone.

Dated: July 7, 2014.

G. Loebl,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2014–17598 Filed 7–24–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–1126]

Security Zones; Seattle's Seafair Fleet Week Moving Vessels, Puget Sound, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce Seattle's Seafair Fleet Week Moving Vessels Security Zones from 12:00 p.m. on July 29, 2014 through 6:00 p.m. on August 4, 2014. These security zones are necessary to help ensure the security of the vessels from sabotage or other subversive acts during Seafair Fleet Week Parade of Ships. The designated participating vessels are the HMCS BRANDON (NCSM 710), the HMCS YELLOWKNIFE (NCSM 706), and the USCGC MELLON (WHEC 717). During the enforcement period, no person or vessel may enter or remain in the security zones without the permission of the Captain of the Port, Puget Sound or his designated representative. The COTP has granted general permission for vessels to enter the outer 400 yards of the security zones as long as those vessels within the outer 400 yards of the security zones operate at the minimum speed necessary to maintain course unless required to maintain speed by the navigation rules.

DATES: The regulations in 33 CFR 165.1333 will be enforced from 12:00 p.m. on July 29, 2014 through 6:00 p.m. on August 4, 2014, unless canceled sooner by the Captain of the Port, Puget Sound or his designated representative.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email LTJG Johnny Zeng, Sector Puget Sound Waterways Management, Coast Guard; telephone (206) 217–6323, *SectorPugetSoundWWM@uscg.mil*.

SUPPLEMENTARY INFORMATION:

The Coast Guard will enforce the security zones listed in 33 CFR 165.1333 for Seattle's Seafair Fleet Week Moving Vessels from 12:00 p.m. on July 29, 2014 through 6:00 p.m. on August 4, 2014.

In accordance with the general regulations in 33 CFR part 165, subpart D, no person or vessel may enter or remain in the security zones without the permission of the Captain of the Port(COTP), Puget Sound or his Designated Representative. For the purposes of this rule, the following areas are security zones: all navigable waters within 500 yards of the HMCS BRANDON (NCSM 710), the HMCS YELLOWKNIFE (NCSM 706), and the USCGC MELLON (WHEC 717) while each such vessel is in the Sector Puget Sound COTP Zone.

The COTP has granted general permission for vessels to enter the outer 400 yards of the security zones as long as those vessels within the outer 400 yards of the security zones operate at the minimum speed necessary to maintain course unless required to maintain speed by the navigation rules. The COTP may be assisted by other federal, state or local agencies with the enforcement of the security zones.

All vessel operators who desire to enter the inner 100 yards of the security zones or transit the outer 400 yards at greater than minimum speed necessary to maintain course must obtain permission from the COTP or a designated representative by contacting the on-scene Coast Guard patrol craft on VHF 13 or Ch 16. Requests must include the reason why movement within this area is necessary. Vessel operators granted permission to enter the security zones will be escorted by the on-scene Coast Guard patrol craft until they are outside of the security zones.

This document is issued under authority of 33 CFR 165.1333 and 5 U.S.C 552(a). In addition to this document, the Coast Guard will provide the maritime community with advanced notification of the security zones via the Local Notice to Mariners and marine information broadcasts on the day of the event.

Dated: July 16, 2014.

M. W. Raymond,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2014–17601 Filed 7–24–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2014–OSERS–0023]

Final Priority; National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority under the Disability and Rehabilitation Research Projects and Centers Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, we announce a priority for a Disability and Rehabilitation Research Project (DRRP) on Improving Methods of Evaluating Return on Investment (ROI) for the State Vocational Rehabilitation Services Program (VR Program). The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2014 and later years. We take this action to focus research attention on an area of national need. We intend for the priority to contribute to improved employment outcomes for individuals with disabilities.

DATES: *Effective Date:* This priority is effective August 25, 2014.

FOR FURTHER INFORMATION CONTACT: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most significant disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Disability and Rehabilitation Research Projects

The purpose of NIDRR's DRRPs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and

[CFDA Number: 84.133A–10.]

employment outcomes for individuals with disabilities, especially individuals with the most significant disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: Research, training, demonstration, development, utilization, dissemination, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b). Additional information on the DRRP program can be found at: *http://www2.ed.gov/programs/drrp/index.html.*

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Program Regulations: 34 CFR part 350.

We published a notice of proposed priority for this program in the **Federal Register** on May 23, 2014 (79 FR 29701). That notice contained background information and our reasons for proposing the particular priority.

There are differences between the proposed priority and this final priority as discussed in the *Analysis of Comments and Changes* section of this notice.

Public Comment: In response to our invitation in the notice of proposed priority, 16 parties submitted comments on the proposed priority.

Generally, we do not address technical and other minor changes.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priority since publication of the notice of proposed priority follows.

Comment: One commenter suggested that the ROI model(s) to be developed and implemented under this priority should use individual-level data, since vocational rehabilitation (VR) services are individualized and delivered to meet the specific needs of individual VR consumers. In response to the requirement in paragraph (a) that ROI ''model(s) must include variables such as costs associated with individuals who enter the agency but leave without receiving services,'' this commenter also stated that such a model may not adequately take into account the experiences of individuals who leave the VR system, and then return to achieve successful employment outcomes.

Discussion: With this priority we are seeking advancements in ROI models for the VR Program. Advanced models for determining ROI use individual-level data over extended periods of time. As noted by the commenter, the collection of individual-level data is particularly important when developing models related to VR services, which are individualized and delivered to meet the specific needs of individual VR consumers. Consistent with the proposed priority, paragraph (a) of the final priority specifies that ROI models must include some data which are typically collected at the individual level. These data include relevant characteristics of, and services received by, VR consumers, including the extent to which VR consumers may exit and return for subsequent services and achieve successful outcomes.

Changes: None.

Comment: Three commenters stated that ROI models should never be applied to individual VR client cases to determine the costs and benefits of the services received by specific VR clients.

Discussion: We agree with the commenter. While data for ROI models are collected at the level of the individual VR consumer, the models to be developed and tested under this priority are aggregate models of employment outcomes achieved at the VR Program level. The purpose of the ROI models is to identify service delivery factors that facilitate employment for VR consumers with different characteristics and disability types—not to assess the costs and benefits of VR services for individual VR consumers.

Changes: None.

Comment: Four commenters expressed concerns that the ROI model(s) to be developed under this priority could be used or applied in ways that harm individuals with disabilities and the VR agencies that serve them. These concerns include the fear that (1) the results of ROI model(s) could be used to penalize State VR agencies that serve consumers in specific disability subpopulations that have greater and more expensive service needs, (2) the ROI model(s) could be used to establish cost maximums that must not be exceeded by VR agencies, and (3) widespread use of the ROI model(s) could lead agencies to serve only those with minimal or inexpensive service needs.

Discussion: We understand and appreciate these concerns. As noted by many of the commenters, the Rehabilitation Act requires a VR agency to first serve those individuals with the most significant disabilities if it cannot serve all eligible individuals and to provide services based on the individualized needs of eligible individuals. Using ROI findings in the ways the commenter has described would be contrary to statutory intent. All VR agencies have the responsibility to ensure that VR services are provided fairly and equitably, regardless of the disabling condition of individual consumers or the costs associated with serving them. Within the context of the requirements of the Rehabilitation Act, our intent is to support the development of more sophisticated ROI models that can systematically identify VR service delivery factors that facilitate positive employment outcomes, while taking into account the wide variation in VR consumer characteristics, service delivery experiences, and outcomes.

Changes: None.

Comment: One commenter stated that many of the benefits of VR services cannot be measured or accounted for by ROI models, including the value to communities of increased workforce and community participation of individuals with disabilities and more positive perceptions of people with disabilities by employers and community members who do not have disabilities.

Discussion: We agree that many of the benefits of VR services are not easily quantified. Nothing in the priority precludes applicants from proposing to develop and test ROI models that include community-level outcome variables as described by the commenter. The peer review process will determine the merits of each proposal.

Although we recognize that an ROI model may not adequately reflect all potential outcome variables, we establish this priority to increase the field's ability to build ROI models with important variables for which quantifiable data are available, including receipt of VR services, costs associated with specific VR services, and the long-term employment outcomes achieved by VR consumers. By improving the methods for such ROI analysis, we aim to assess and demonstrate the impact of the VR Program on employment outcomes of individuals with disabilities and to identify promising practices that can be scaled up in VR Programs across the United States.

Changes: None.

Comment: Two commenters stated that the ROI models to be developed and tested under this priority should take into account the variation in VR Program characteristics that exist throughout the United States. One of

these commenters requested that NIDRR modify the priority to require that the standards for ROI models that are developed and disseminated under paragraph (c) take this variation in VR Programs into account.

Discussion: We recognize that there is variation in the characteristics of State VR agencies, including in their VR Program administration. To address this variation, in paragraph (b) of the priority, we require that the ROI model(s) developed under paragraph (a) be tested in at least eight State VR agencies with varying program characteristics.

Changes: In addition, we have revised paragraph (c) to require that the standards developed for conducting ROI studies under this priority adequately account for the varying characteristics of VR Programs.

Comment: One commenter recommended that NIDRR modify paragraph (f) of the priority to require the advisory board to include current or former VR consumers to help ensure that ROI results are used in ways that are meaningful for the individuals served by the VR Program.

Discussion: NIDRR agrees with the commenter that current or former VR consumers should be included in the advisory board for this grant.

Changes: NIDRR has revised paragraph (f) to require the inclusion of current or former VR consumers on the advisory board.

Comment: One commenter stated that ROI models should be developed separately for programs serving blind and visually impaired individuals, relative to programs serving the broader population of individuals with disabilities.

Discussion: NIDRR does not think that separate models are necessary for agencies that serve only blind and visually impaired individuals. The model(s) to be developed under this priority will use and control for a large number of variables including disability type, severity of disability, and the VR services provided. In addition, we have revised paragraph (c) of the priority to require that the standards developed for conducting ROI studies adequately account for the varying characteristics of VR Programs. By developing models that are based on data from the full population of VR consumers with disabilities, we aim for the model(s) to identify promising practices that are associated with high-quality employment outcomes and that can be applied and scaled up widely in VR Programs across the United States.

Changes: None.

Comment: One commenter requested that NIDRR modify the priority to require the ROI models to take the following factors into account: (1) Whether consumers are placed in integrated employment settings versus sheltered settings, (2) length of employment following a VR case closure, and (3) the likelihood of employment and earnings for VR clients in the model(s).

Discussion: NIDRR agrees with the commenter that the ROI model(s) to be developed under this priority must account for the variation in the types of employment outcomes, including employment settings, as well as the wide variation in VR consumer characteristics that may affect the likelihood of a consumer obtaining employment without VR services and a consumer's long-term outcomes, such as the length of employment and wages earned. To address the commenter's proposed factors, we have modified in paragraph (a) the list of variables to be included in the ROI models being developed under this priority.

Changes: The list of variables in paragraph (a) to be included in the ROI models being developed under this priority has been expanded to add type of employment outcome, including employment setting. In addition, in paragraph (a), length of employment and wages earned have been added as examples of long-term outcome variables and the likelihood of a consumer obtaining employment without VR services has been added as an example of a characteristic of disability subpopulations.

Final Priority

Improving Methods of Evaluating Return on Investment (ROI) for the State Vocational Rehabilitation (VR) Services Program

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for a DRRP on Improving Methods of Evaluating Return on Investment (ROI) for the State Vocational Rehabilitation Services Program (VR Program).

Under this priority, the DRRP must contribute to improving the ROI methodologies available to assess the impact of the VR Program on employment outcomes of individuals with disabilities. This includes:

(a) Developing or expanding valid, innovative, and replicable ROI model(s) for assessing the VR Program and the services it provides. These model(s) must include: Variables such as costs associated with individuals who enter the agency but leave without receiving services, costs related to specific services so VR agencies can better consider ROI when determining services that lead to better outcomes, estimates of State and Federal expenditures incurred as part of the VR Program administration and service delivery system, characteristics of disability subpopulations (e.g., disability type, severity of disability, and likelihood of obtaining employment without VR services), type of employment outcome, including the employment setting (e.g., competitive integrated employment), long-term outcomes extending years after exit from the VR Program (e.g., length of employment and wages earned), and information on general economic conditions. These models must use rigorous methods, including the use of a comparison group to determine the effect of the VR Program.

(b) Testing the model(s) in at least eight State VR agencies with varying characteristics (e.g., urban/rural, with/without waitlists) to determine its replicability, including determining what data are necessary to make the model(s) successful and evaluating the data quality and data availability in selected sites. The final number of sites must be approved by NIDRR. In carrying out this requirement, we want the successful applicant to clarify a process for ensuring access to Social Security data and earnings data as required to assess long-term impact of the VR Program.

(c) Developing and disseminating recommended standards for conducting ROI studies of the VR Program. These standards must adequately account for the varying characteristics of VR Programs.

(d) Producing and disseminating training materials to support the VR Program in using the model(s).

(e) Making the underlying data available so others can learn from and replicate the findings, without compromising personally identifiable information. Data availability will conform to all security requirements of identified sources.

(f) Working with an advisory board made up of current or former VR consumers, as well as ROI, VR, and research methodology experts to ensure the findings are relevant, replicable, and sound.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this final priority only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

The benefits of the Disability and Rehabilitation Research Projects and Centers Program have been well established over the years, as projects similar to the one envisioned by the final priority have been completed successfully. The new DRRP will generate and promote the use of new information that is intended to improve outcomes for individuals with disabilities.

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

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

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

Dated: July 22, 2014.

Melody Musgrove,

Director, Office of Special Education Programs.

[FR Doc. 2014–17604 Filed 7–24–14; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2013–0214; FRL–9914–24–Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Solvent Degreasing Operations Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a request submitted by the Indiana Department of Environmental Management (IDEM) on March 14, 2013, to revise the Indiana state implementation plan (SIP) solvent degreasing operation rule. The state's submission seeks to extend vapor pressure limitations (previously applying to four counties) state-wide, add certain exemptions and streamline the rule by repealing and consolidating certain provisions. There is also a revised definition for ''cold cleaner degreaser.''

DATES: This direct final rule will be effective September 23, 2014, unless EPA receives adverse comments by August 25, 2014. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2013–0214, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakley.pamela@epa.gov.*
3. *Fax:* (312) 692–2450.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2013–0214. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Charles Hatten, Environmental Engineer, (312) 886–6031 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background for this action?
II. What revision did the State request be incorporated into the SIP?
III. What action is EPA taking today and what is the basis for this action?
IV. Statutory and Executive Order Reviews

I. What is the background for this action?

On March 14, 2013, the IDEM submitted a request to revise 326 Indiana Administrative Code (IAC), Article 8, Rule 3, organic solvent degreasing operation (326 IAC 8–3) in Indiana's SIP. Revisions to this rule would: Extend the solvent low pressure requirement for cold cleaner degreasers to the entire state; add certain exemptions and streamline the rule by repealing and consolidating certain provisions. Revisions to the Definitions regulation would revise the definition for ''cold cleaner degreaser'' (326 IAC 1–2–18.5).

On October 5, 2012, IDEM published a ''Notice of Public Information'' in several newspapers, and on their Web site at *http://www.in.gov/idem/5474.htm,* providing a 30-day public comment period on the proposed revision to its SIP concerning organic solvent degreasing operations. The notice also informed the public that a hearing was scheduled for November 7, 2012. A public hearing was held on November 7, 2012. IDEM did not receive any comments.

This revised regulation applies to any person operating a degreaser using solvents that contain one or more volatile organic compounds (VOCs) located in the state. VOCs contribute to the formation of ozone.

Solvent degreasing operations are an integral part of many industries as solvents or solvent vapors are used to remove water soluble contaminants, such as grease, oils, waxes, carbon deposits, fluxes, and tars from metal, plastic, glass, and other surfaces. Emissions of VOCs occur as a result of evaporation from storage and handling, and use of fresh and spent solvents. Solvents that are not recycled or disposed of may eventually be emitted to the atmosphere. Solvent degreasing operations may utilize one of the three methods of cleaning an article: (1) Use of cold cleaner degreaser, (2) an open top degreaser, or (3) the use of a conveyor degreaser system.

II. What revision did the State request be incorporated into the SIP?

IDEM has requested the following revisions to Indiana's SIP:

Rule 326 IAC 8–3, ''Organic Solvent Degreasing Operation''

IDEM revised 326 IAC 8–3 as follows: (1) Exemptions were added to 326 IAC 8–3–1, (2) sections 326 IAC 8–3–5, 326 IAC 8–3–6, and 326 IAC 8–3–7 were repealed and consolidated into sections 326 IAC 8–3–2, 326 IAC 8–3–3, and 326

IAC 8–3–4, and (3) the one (1) millimeter of mercury (mm Hg) solvent vapor pressure restriction for cold cleaner degreasers was made state-wide. The applicability section of 326 IAC 8–3–1, states that it applies to the following: (1) All persons owning or operating degreasers using solvents that contain one or more VOCs located in the state, (2) any person who sells, offers for sale, uses, or manufactures solvents that contain one or more VOCs for use in cold cleaner degreasers. These changes are consistent with the approved SIP.

IDEM also revised the applicability of 326 IAC 8–3–1 by adding certain exemptions. Section (d) of 326 IAC 8–3 states that the solvent degreasing operations and control requirements identified in 326 IAC 8–3–2 through 326 IAC 8–3–4 do not apply to degreasers that: (1) Are required to operate and comply with 326 IAC 20–6–1 that incorporates by reference the National Emission Standard for Hazardous Air Pollutants (NESHAP) at 40 CFR 63, subpart T—for halogenated solvent cleaning (which controls both hazardous air pollutant (HAP) and VOC emissions; (2) use solvents that contains less than one percent VOC by weight. Also, the rule states that the solvent material requirements in section 8 of 326 IAC 8–3, do not apply to degreasers that: (1) Are required to operate and comply with 326 IAC 20–15–1 that incorporates by reference the NESHAP at 40 CFR 63, subpart GG—for aerospace manufacturing & rework facilities not located in Clark, Floyd, Lake, or Porter County; or (2) use solvents that contain less than one percent VOC by weight.

These changes are acceptable and approvable into Indiana's SIP for the following reasons: (1) The NESHAP in 40 CFR 63, subpart T—for halogenated solvent cleaning has similar operational requirements to those in 326 IAC 8–3–2 thru 8–4, (2) the aerospace manufacturing exemption from the 1 mm Hg vapor pressure limitation does not relax this requirement where it previously applied in Clark, Floyd, Lake, and Porter counties and (3) sources that primarily use water-borne solvents for cleaning, containing less than one percent VOC by weight, will emit less VOCs than those using VOCs that comply with the operational requirements of this rule.

In order to streamline the structure of the rule, IDEM repealed sections 326 IAC 8–3–5, 326 IAC 8–3–6, and 326 IAC 8–3–7 to consolidate rule requirements into sections 326 IAC 8–3–2 (Cold cleaner degreaser operation), 326 IAC 8–3–3 (Open top vapor degreaser operation), and 326 IAC 8–3–4 (Conveyorized degreaser operation). This consolidation clarifies the rule language and its requirements. These changes are consistent with the approved SIP.

Lastly, the revisions to 326 IAC 8–3 extend the solvent material requirements applicable to users, providers, and manufacturers of solvents for use in cold cleaner degreasers at 328 IAC 8–3–8, on and after January 1, 2015, state-wide. Indiana's solvent degreasing operation rule contains a cold cleaning solvent vapor pressure limit that stipulates—''no person shall operate a cold cleaner degreaser with a solvent vapor pressure that exceeds one (1) millimeter of mercury measured at twenty (20) degrees Celsius.'' Previously, this rule requirement only applied to cold cleaning degreaser operations located in Clark, Floyd, Lake, and Porter counties. Limiting the solvent vapor pressure to 1 mmHg on a state-wide basis would strengthen Indiana's SIP to reduce emission of VOCs and the formation of ozone from cold cleaner degreaser operations.

Rule 326 IAC 1–2–18.5, Definition of ''Cold Cleaner Degreaser''

IDEM made a minor revision to its definition of cold cleaner degreaser. Currently in SIP rule 326 IAC 1–2–18.5, a ''cold cleaner degreaser'' means a tank containing organic solvent at a temperature below the boiling point of the solvent that is used to spray, brush, flush, or immerse an article for the purpose of cleaning or degreasing the article. The rule has been revised by adding language to clarify that the definition of a cold cleaner degreaser does not include the activity of wiping to clean the article.

EPA finds that the revisions to Indiana's organic solvent degreasing operation rule at 326 IAC 8–3, and the definition of cold cleaner degreaser at 1–2–18.5, are acceptable, and approvable into the Indiana SIP. Much of the revised rule is consistent with the approved SIP. The main revision expands the 1 mmHg vapor pressure restriction for cold cleaning degreasers from only applying to Clark, Floyd, Lake, and Porter counties to the entire state.

III. What action is EPA taking today and what is the basis for this action?

EPA is approving the March 14, 2013, request by Indiana to revise the SIP's solvent degreasing operation rule at 326 IAC 8–3, and the definition of cold cleaner degreaser at 326 IAC 1–2–18.5.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective September 23, 2014 without further notice unless we receive relevant adverse written comments by August 25, 2014. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective September 23, 2014.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 23, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Emissions Reporting, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: July 14, 2014.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.770 the table in paragraph (c) is amended by:

■ a. Revising the entry for 1–2–18.5 under ''Article 1. General Provisions,'' ''Rule 2. Definitions.''

■ b. Revising the entries for ''Rule 3. Organic Solvent Degreasing Operations'' under the subheading entitled ''Article 8. Volatile Organic Compound Rules''.

The revised text reads as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

EPA–APPROVED INDIANA REGULATIONS

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
*	*	*	*	*
Article 1. General Provisions				
*	*	*	*	*
Rule 2. Definitions				
*	*	*	*	*
1–2–18.5	''Cold cleaner degreaser'' defined.	3/1/2013	7/25/2014, [INSERT **Federal Register** CITATION].	
*	*	*	*	*
Article 8. Volatile Organic Compound Rules				
*	*	*	*	*
Rule 3. Organic Solvent Degreasing Operations				
8–3–1	Applicability and Exemptions	3/1/2013	7/25/2014, [INSERT **Federal Register** CITATION].	

EPA–APPROVED INDIANA REGULATIONS—Continued

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
8–3–2	Cold cleaner degreaser control equipment and operating requirements.	3/1/2013	7/25/2014, [INSERT **Federal Register** CITATION].	
8–3–3	Open top vapor degreaser operation.	3/1/2013	7/25/2014, [INSERT **Federal Register** CITATION].	
8–3–4	Conveyorized degreaser control equipment and operating requirements.	3/1/2013	7/25/2014, [INSERT **Federal Register** CITATION].	
8–3–5	Cold cleaner degreaser operation and control (Repealed).	3/1/2013	7/25/2014, [INSERT **Federal Register** CITATION].	
8–3–6	Open top vapor degreaser operation and control requirements (Repealed).	3/1/2013	7/25/2014, [INSERT **Federal Register** CITATION].	
8–3–7	Conveyorized degreaser operation and control (Repealed).	3/1/2013	7/25/2014, [INSERT **Federal Register** CITATION].	
8–3–8	Material requirements for cold cleaner degreasers.	3/1/2013	7/25/2014, [INSERT **Federal Register** CITATION].	
*	*	*	*	*	*	*

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[FR Doc. 2014–17476 Filed 7–24–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2010–0890; FRL– 9914–31–Region–6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Control of Air Pollution From Motor Vehicles, Vehicle Inspection and Maintenance and Locally Enforced Motor Vehicle Idling Limitations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Texas State Implementation Plan (SIP). The revisions to the Texas Administrative Code (TAC) were submitted in 2002, 2005, 2006, 2008, 2010, 2011 and 2012. These revisions are related to the implementation of the state's motor vehicle emissions Inspection and Maintenance (I/M) program and the Locally Enforced Motor Vehicle Idling Limitations. The EPA is approving these revisions pursuant to the Clean Air Act (CAA).

DATES: This final rule is effective on August 25, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2010–0890. All documents in the docket are listed in the *www.regulations.gov* index and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment with the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253.

FOR FURTHER INFORMATION CONTACT: Mr. John Walser (6PD–L), Air Planning Section, telephone (214) 665–7128, email: *walser.john@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' means EPA.

Table of Contents

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

I. Background

The background for today's action is discussed in detail in our April 15, 2014 proposal (79 FR 21179) and the accompanying Technical Support Document. In that notice we proposed to approve submittals that revise the Texas State Implementation Plan (SIP) related to the implementation of the state's motor vehicle emissions Inspection and Maintenance (I/M) program and the Locally Enforced Motor Vehicle Idling Limitations. We received no comments on our proposed approval. Therefore, we are finalizing our approval as proposed, with the exception of the clerical errors noted below. Specifically, we are approving submittals dated August 16, 2002, December 30, 2002, November 14, 2005, May 15, 2006, February 28, 2008, December 22, 2010, August 30, 2011 and August 31, 2012. These submittals include revised narratives, rules, and supporting documentation. We are approving these revisions to Title 30 of the Texas Administrative Code (30 TAC). The revisions address testing requirements, updating equipment analyzer specifications, repealing duplicative I/M waiver rules, withdrawing OBD as a contingency measure, repealing an early participation incentive program, revising vehicles idling waivers and numerous other administrative, non-substantive rule changes that add clarity and improve readability of the rules. EPA is approving these revisions pursuant to sections 110 and 182 of the CAA.

The Proposed Action section of our April 15, 2014 proposal contained clerical errors. Specifically, that section inadvertently lists revisions to Chapter 114 of 30 TAC 114.211, 144.212, 144.213, 114.214, 114.215, 144.216, 144.217 and 114.219. See 79 FR at 21186. However, those sections are not in the SIP; and we are not acting on any submittal of those sections at this time. Additionally, we incorrectly listed Chapter 114.1 and 114.4 in the Proposed Action section of the April 15, 2014 proposal, but we are not taking any action on revisions to Section 114.1 or

114.4 at this time. This action finalizes approval of revisions to only 30 TAC §§ 114.2, 114.50, 114.51, 114.52, 114.53, 114.512, and 114.517.

II. Final Action

The EPA is approving revisions to regulations, and updates to the I/M portion of the mobile source strategies that control emissions from motor vehicles in Texas. We are approving revisions to the following sections within Chapter 114 of 30 TAC: 114.2, 114.50, 114.51, 114.52 (repealed), 114.53, 114.512, and 114.517. We are also approving revisions to 37 TAC 23.93. We are approving the following SIP revisions, including narratives, that revise the I/M and vehicle idling programs: August, 16, 2002, December 30, 2002, November 14, 2005, May 15, 2006, February 28, 2008, December 22, 2010, August 30, 2011 and August 31, 2012. We are approving these SIP revisions except for the revisions to 114.50(b)(2) as explained in the discussion of the November 14, 2005 submittal in the proposal. The EPA is approving these revisions in accordance with sections 110 and 182 of the Act and EPA's regulations and consistent with EPA guidance.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 23, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purpose of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: July 15, 2014.

Ron Curry,

Regional Administrator, Region 6.

40 CFR Part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart SS—Texas

■ 2. In § 52.2270:

■ a. In paragraph (c), the table entitled ''EPA Approved Regulations in the Texas SIP'' is amended by revising entries for Sections 114.2, 114.50, 114.51, 114.53, 114.512, 114.517, removing the entry for Section 114.52, and adding a new centered heading and entry for Texas Department of Public Safety—37 TAC Chapter 23—Vehicle Inspection, and Section 23.93 immediately after the entry for Section 17.80.

■ b. In paragraph (e), the second table entitled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' is amended by adding a new entry to the end of the table for Vehicle Inspection and Maintenance.

The revisions and additions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/Subject	State approval/ submittal date	EPA approval date	Explanation
* *	*	*	*	* *
114.2	Inspection and Maintenance Definitions.	11/18/2010	7/25/2014 [Insert FR page number where document begins].	
* *	*	*	*	* *
Section 114.50	Vehicle Emission Inspection Requirements.	10/26/2005	7/25/2014 [Insert FR page number where document begins].	
114.51	Equipment Evaluation Procedures for Vehicle Gas Analyzers.	11/18/2010	7/25/2014 [Insert FR page number where document begins].	
114.53	Inspection and Maintenance Fees.	10/26/2005	7/25/2014 [Insert FR page number where document begins].	
* *	*	*	*	* *
Section 114.512	Control Requirements for Motor Vehicle Idling.	7/20/2011	7/25/2014 [Insert FR page number where document begins].	
Section 114.517	Exemptions	8/08/2012	7/25/2014 [Insert FR page number where document begins].	
* *	*	*	*	* *
Texas Department of Public Safety—37 TAC Chapter 23—Vehicle Inspection				
Section 23.93	Vehicle Emissions Inspection Requirements.	10/26/2005	7/25/2014 [Insert FR page number where document begins].	
* *	*	*	*	* *

(e) * * *

EPA-APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or non-attainment area	State submittal/ effective date	EPA approval date	Comments
* *	*	*	*	* *
Vehicle Inspection and Maintenance.	Dallas-Fort Worth, El Paso County and Houston-Galveston-Brazoria.	12/22/2010	7/25/2014 [Insert *FR* page number where document begins].	

[FR Doc. 2014–17478 Filed 7–24–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 173

Shippers—General Requirements for Shipments and Packagings

CFR Correction

In Title 49 of the Code of Federal Regulations, Parts 100 to 177, revised as of October 1, 2013, on page 527, in § 173.62, in paragraph (c)(5), at the end of the Table of Packing Methods, packing instruction US 1 is reinstated to read as follows:

§ 173.62 Specific packaging requirements for explosives.

* * * * *

(c) * * *

(5) * * *

TABLE OF PACKING METHODS

* * * * * * *	
US 1	1. A jet perforating gun, charged, oil well may be transported under the following conditions: a. Initiation devices carried on the same motor vehicle or offshore supply vessel must be segregated; each kind from every other kind, and from any gun, tool or other supplies, unless approved in accordance with § 173.56. Segregated initiation devices must be carried in a container having individual pockets for each such device or in a fully enclosed steel container lined with a non-sparking material. No more than two segregated initiation devices per gun may be carried on the same motor vehicle. b. Each shaped charge affixed to the gun may not contain more than 112 g (4 ounces) of explosives. c. Each shaped charge if not completely enclosed in glass or metal, must be fully protected by a metal cover after installation in the gun. d. A jet perforating gun classed as 1.1D or 1.4D may be transported by highway by private or contract carriers engaged in oil well operations. (i) A motor vehicle transporting a gun must have specially built racks or carrying cases designed and constructed so that the gun is securely held in place during transportation and is not subject to damage by contact, one to the other or any other article or material carried in the vehicle; and (ii) The assembled gun packed on the vehicle may not extend beyond the body of the motor vehicle. e. A jet perforating gun classed as 1.4D may be transported by a private offshore supply vessel only when the gun is carried in a motor vehicle as specified in paragraph (d) of this packing method or on offshore well tool pallets provided that: (i) All conditions specified in paragraphs (a), (b), and (c) of this packing method are met; (ii) The total explosive contents do not exceed 90.8 kg (200 pounds) per tool pallet; (iii) Each cargo vessel compartment may contain up to 90.8 kg (200 pounds) of explosive content if the segregation requirements in § 176.83(b) of this subchapter are met; and (iv) When more than one vehicle or tool pallet is stowed "on deck" a minimum horizontal separation of 3 m (9.8 feet) must be provided.

[FR Doc. 2014–17663 Filed 7–24–14; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 120706221–2705–02]

RIN 0648–XD369

Atlantic Highly Migratory Species (HMS); Commercial Blacknose Sharks and Non-Blacknose Small Coastal Sharks (SCS) in the Atlantic Region

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is closing the fisheries for commercial blacknose sharks and non-blacknose SCS in the Atlantic region. This action is necessary because the commercial landings of Atlantic blacknose sharks for the 2014 fishing season has exceeded 80 percent of the available commercial quota as of July 22, 2014.

DATES: The commercial fisheries for blacknose sharks and Atlantic non-blacknose SCSs in the Atlantic region are closed effective 11:30 p.m. local time July 28, 2014 until the end of the 2014 fishing season on December 31, 2014, or until and if NMFS announces via a notice in the **Federal Register** that additional quota is available and the season is reopened.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz or Alexis Jackson 301–427–8503; fax 301–713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the 2006 Consolidated HMS Fishery Management Plan (FMP), its amendments, and its implementing regulations (50 CFR part 635) issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Under § 635.5(b)(1), dealers must electronically submit reports on sharks that are first received from a vessel on a weekly basis through a NMFS-approved electronic reporting system, received by NMFS no later than midnight, local time, of the first Tuesday following the end of the reporting week unless the dealer is otherwise notified by NMFS. Under § 635.28(3), the quotas of certain species and/or management groups are linked. The quotas for blacknose sharks and the non-blacknose SCS management group in the Atlantic region are linked (§ 635.28(b)(3)(iii)). Under § 635.28(b)(2), when NMFS calculates that the landings for any species and/or management group of a linked group have exceeded 80 percent of the available quota, NMFS will file for publication with the Office of the Federal Register a notice of closure for all of the species and/or management groups in a linked group that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until and if NMFS announces, via a notice in the **Federal Register**, that additional quota is available and the season is reopened, the fisheries for all linked species and/or management groups is closed, even across fishing years. On November 26, 2013 (78 FR 70500), NMFS announced that the commercial Atlantic blacknose shark quota for 2014 is 17.5 metric tons (mt) dressed weight (dw) (38,638 lb dw), and the Atlantic non-blacknose SCS quota is 264.1 metric tons (mt) dressed weight (dw) (582,333 lb dw). Dealer reports recently received through July 22, 2014, indicate that 15.2 mt dw or 87 percent of the available Atlantic blacknose shark quota has been landed and 85.2 mt dw or 32 percent of the available Atlantic non-blacknose SCS quota has been landed. Accordingly, NMFS is closing both the commercial blacknose shark fishery and non-blacknose SCS management group in the Atlantic region as of 11:30 p.m. local time July 28, 2014. The fisheries for all other shark species or management groups that are currently open will remain open, including the fisheries for commercial Atlantic aggregated large coastal sharks (LCS) and Atlantic hammerhead sharks.

At § 635.27(b)(1), the boundary between the Gulf of Mexico region and the Atlantic region is defined as a line beginning on the East Coast of Florida at the mainland at 25°20.4′ N. lat,

proceeding due east. Any water and land to the south and west of that boundary is considered, for the purposes of monitoring and setting quotas, to be within the Gulf of Mexico region.

During the closure, retention of blacknose sharks and non-blacknose SCS in the Atlantic region is prohibited for persons fishing aboard vessels issued a commercial shark limited access permit under § 635.4. However, persons aboard a commercially permitted vessel that is also properly permitted to operate as a charter vessel or headboat for HMS and is engaged in a for-hire trip could fish under the recreational retention limits for sharks and ''no sale'' provisions (§ 635.22(a) and (c)).

During this closure, a shark dealer issued a permit pursuant to § 635.4 may not purchase or receive blacknose sharks or non-blacknose SCS in the Atlantic region from a vessel issued an Atlantic Shark Limited Access Permit (LAP), except that a permitted shark dealer or processor may possess blacknose sharks and/or non-blacknose SCS in the Atlantic region that were harvested, off-loaded, and sold, traded, or bartered prior to the effective date of the closure and were held in storage consistent with § 635.28(b)(5). Similarly, a shark dealer issued a permit pursuant to § 635.4 may, in accordance with relevant state regulations, purchase or receive blacknose sharks and/or non-blacknose SCS in the Atlantic region if the sharks were harvested, off-loaded, and sold, traded, or bartered from a vessel that fishes only in state waters and that has not been issued an Atlantic Shark LAP, HMS Angling permit, or HMS Charter/Headboat permit pursuant to § 635.4.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA (AA), finds that providing prior notice and public comment for this action is impracticable and contrary to the public interest because the fisheries are currently underway and any delay in this action would result in overharvest of the quota and be inconsistent with management requirements and objectives. Similarly, affording prior notice and opportunity for public comment on this action is contrary to the public interest because if the quota is exceeded, the stock may be negatively affected and fishermen ultimately could experience reductions in the available quota and a lack of fishing opportunities in future seasons. For these reasons, the AA also finds good cause to waive the 30-day delay in effective date pursuant to 5 U.S.C. 553(d)(3). This action is required under § 635.28(b)(2) and is exempt from review under Executive Order 12866.

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

Dated: July 22, 2014.

Alan D. Risenhoover,

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

[FR Doc. 2014–17629 Filed 7–23–14; 11:15 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 031125294–4091–02]

RIN 0648–XD238

Fisheries Off West Coast States; the Highly Migratory Species Fishery; Closure

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

ACTION: Inseason action; closure.

SUMMARY: We, NMFS, are immediately closing the Pacific loggerhead conservation area, prohibiting fishing with large mesh drift gillnet (DGN) gear (>14 in mesh) off the coast of southern California east of 120° West meridian through August 31, 2014. This prohibition is based on the Assistant Administrator for Fisheries' (AA) determination that El Niño conditions are occurring off the coast of southern California. This action protects Endangered Species Act (ESA) listed loggerhead sea turtles (*Caretta caretta*), specifically the endangered North Pacific Ocean Distinct Population Segment. Large mesh DGN fishing vessels must cease fishing east of 120° west on publication of this document.

DATES: Effective 12:01 a.m. Pacific Daylight Time (PDT) July 23, 2014 through 11:59 p.m., August 31, 2014.

FOR FURTHER INFORMATION CONTACT: Craig Heberer, West Coast Region, NMFS, (760) 431–9440, ext. 303; *craig.heberer@noaa.gov.*

SUPPLEMENTARY INFORMATION: The DGN fishery is managed under the Fishery Management Plan (FMP) for U.S. West Coast Fisheries for Highly Migratory Species (HMS) (50 CFR part 660, subpart K). The fishery occurs off the coast of California. Our regulations provide that ''No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean east of the 120° W. meridian from June 1 through August 31 during a forecasted, or occurring, El Niño event off the coast of southern California.'' 50 CFR 660.713(c)(2). This area, which falls within the southern California Bight (SCB), is referred to in the regulations as the Pacific loggerhead conservation area.

Under 50 CFR 660.713(c)(2)(ii), the AA is to make the determination that an El Niño event is forecasted or occurring off southern California, relying on information developed by NOAA offices such as the Climate Prediction Center (CPC) and the West Coast Office of the Coast Watch program. The AA is to use monthly sea surface temperature (SST) charts to determine whether there are warmer than normal SSTs off southern California ''during the months prior to the closure months for years in which an El Niño event has been declared'' by the CPC. The AA is also to specifically use SST data from the third and second months prior to the month of closure.

We published these regulations to protect ESA-listed loggerhead sea turtles in response to a reasonable and prudent alternative (RPA) included in our 2000 biological opinion on issuance of an incidental take permit under the Marine Mammal Protection Act. The consultation concluded that bycatch in the DGN fishery jeopardized the continued existence of the turtles and required the regulations to avoid jeopardy. We have not closed the Pacific loggerhead conservation area since the regulations were first published in 2003 because the AA has not determined El Niño conditions were occurring off the coast of southern California.

The CPC forecasts and declares when El Niño conditions exist based on conditions in equatorial waters, but does not forecast or declare when El Niño conditions exist off southern California. This year, based on monthly updates through July 10, 2014, the CPC has not declared an El Niño. The Coast Watch program publishes maps of SST off the California coast through the Environmental Research Division's Data Access Program.

On May 27, 2014, a working group of staff, including sea turtle biologists and oceanographers, from the NMFS West Coast Region (Region) and Southwest Fisheries Science Center (SWFSC) held a teleconference to discuss whether El Niño conditions were likely off the southern California coast during June, July, or August 2014. On May 8, 2014, the CPC had issued an *El Niño watch,* which means that conditions are favorable for the development of El Niño within the next six months, and

stated that the ''chance of El Niño increases during the remainder of the year, exceeding 65% during summer.''

The working group also reviewed the SST anomalies in the SCB during March and April of 2014, relying on SST maps available through NOAA's Coast Watch Program (for details see *http://coastwatch.pfeg.noaa.gov/erddap/index.html*). These maps indicated that SSTs were above normal in southern California. At that time, the working group concluded that a determination of El Niño conditions off southern California was not warranted because the equatorial forecasts appeared to indicate El Niño conditions would not be occurring during June.

On July 3, 2014, the working group met again. The CPC *El Niño watch* remained in effect at that time and remains in effect as of July 10, 2014 (the most recent monthly El Niño forecast published). Although the CPC has not yet declared an El Niño, the workgroup concluded that El Niño conditions are present off the coast of southern California based on SSTs that are warmer than normal during the third and second months prior to the month of the closure, consistent with 50 CFR 660.713(c)(2)(ii).

In addition, the working group noted the presence of loggerhead sea turtles in the SCB, including sightings off Los Angeles County and two stranded loggerhead sea turtles off San Diego County which had been reported by the NMFS stranding network. The working group also noted the sightings of other hard shelled turtles and other rarely seen species (e.g., sei whale and Brydes whale) in the SCB. This information further indicates El Niño conditions are occurring off the coast of southern California and also raises concerns that the DGN fishery would encounter loggerhead sea turtles.

Although the CPC has not declared an El Niño event is occurring, we find such a declaration is not a necessary condition for determining that El Niño conditions are occurring off the southern California coast. The regulations require us to rely on information developed by NOAA offices which monitor El Niño events in making our determination. On July 10, 2014, the CPC reported that ''the chance of El Niño is about 70% during the Northern Hemisphere summer.'' SST information from the Coast Watch program indicates SSTs off the southern California coast are warmer than normal. In addition, the intent of the regulations was to prevent bycatch of loggerhead sea turtles in the DGN fishery. The presence of loggerheads in the area indicates that closure of the fishery meets the intent of the regulations and the RPA requiring their promulgation.

Classification

This action is required by 50 CFR 660.713 and is exempt from Office of Management and Budget review under Executive Order 12866.

NMFS 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) for the closure of the DGN fishery. For the reasons set forth below, notice and comment procedures are impracticable and contrary to the public interest. For the same reasons, NMFS also finds good cause under 5 U.S.C–553(d)(3) to waive the 30-day delay in effectiveness for this action. This measure responds to the best available information, some of which only became available in July, and is necessary for the conservation of loggerhead sea turtles. The closure period anticipated by the regulation ends, at the latest, on August 31st. A delay in effectiveness until early August may allow the fishery to interact with and injure or kill loggerhead sea turtles that may occur within the SCB during the time period in which the regulation was intended to protect loggerheads.

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

Dated: July 22, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2014–17644 Filed 7–23–14; 11:15 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 140417346–4575–02]

RIN 0648–XD252

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

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

ACTION: Final rule; Closure of directed fishing for Pacific sardine notification.

SUMMARY: NMFS issues this final rule to implement the annual catch limit (ACL), and associated annual reference points for Pacific sardine in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of July 1, 2014, through June 30, 2015. The 2014–2015 ACL for Pacific sardine is 23,293 metric tons (mt). The initial overall commercial fishing target that is to be allocated across the three allocation periods for sardine management is 19,293 mt. This amount will be divided across the three seasonal allocation periods for the directed fishery the following way: July 1–September 14—7,718 mt; September 15–December 31—4,823 mt; and January 1–June 30—6,752 mt, with an incidental set-aside of 500 mt for each of the three periods. These specifications were determined according to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). This rule is intended to conserve and manage the Pacific sardine stock off the U.S. West Coast. This rule also announces that the directed fishing harvest total for the first allocation period (July 1–September 14) has been reached and therefore directed fishing for Pacific sardine is now closed until September 15, 2014.

DATES: Effective July 23, 2014 through June 30, 2015, except for the directed harvest closure that is effective through September 14, 2014.

ADDRESSES: West Coast Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, West Coast Region, NMFS, (562) 980–4034.

SUPPLEMENTARY INFORMATION: During public meetings each year, the estimated biomass for Pacific sardine is presented to the Pacific Fishery Management Council's (Council) CPS Management Team (Team), the Council's CPS Advisory Subpanel (Subpanel) and the Council's Scientific and Statistical Committee (SSC), and the biomass and the status of the fishery are reviewed and discussed. The biomass estimate is then presented to the Council along with the calculated overfishing limit (OFL), available biological catch (ABC), and harvest guideline (HG), along with recommendations and comments from the Team, Subpanel, and SSC. Following review by the Council and after hearing public comment, the Council adopts a biomass estimate and makes its catch level recommendations to NMFS.

The purpose of this final rule is to implement the ACL and other annual catch reference points for 2014–2015, including the OFL and an ABC that takes into consideration uncertainty surrounding the current estimate of biomass for Pacific sardine in the U.S. EEZ off the Pacific coast. The CPS FMP

and its implementing regulations require NMFS to set annual catch levels for the Pacific sardine fishery based on the annual specification framework in the FMP. According to the FMP, the ACL must be equal to or less than the ABC, and the annual catch target (ACT) is then set equal to either the FMP-specified HG formula (HG = [(Biomass – CUTOFF) * FRACTION * DISTRIBUTION]) or the ACL, whichever value is less. For the 2014–2015 fishing season, the result of the HG formula was 28,646 mt; the ACT is therefore set equal to the ACL at 23,293 mt because it is less than the HG calculation. For the 2014–2015 fishing season, the Council chose to calculate the ACL using the HG formula, but applied a different temperature index for determining the Fraction parameter than is currently prescribed in the FMP for computing the HG. The rationale for this application is that this new temperature index is a better predictor of Pacific sardine recruitment and productivity.

The HG formula in the CPS FMP is HG = [(Biomass – CUTOFF) * FRACTION * DISTRIBUTION] with the parameters described as follows:

1. *Biomass.* The estimated stock biomass of Pacific sardine age one and above for the 2014/2015 management season is 369,506 mt.

2. *CUTOFF.* This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 150,000 mt.

3. *DISTRIBUTION.* The average portion of the Pacific sardine biomass estimated in the EEZ off the Pacific coast is 87 percent.

4. *FRACTION.* The harvest Fraction is the percentage of the biomass above 150,000 mt that may be harvested. The Fraction varies as a result of current ocean temperatures measured at Scripps Pier, California.

Because the annual biomass estimates are an explicit part of the various harvest control rules for Pacific sardine, including the HG formula described above, as the estimated biomass decreases or increases from one year to the next, the resulting allowable catch levels similarly trend.

At the April 2014 Council meeting, the Council adopted the ''Assessment of the Pacific Sardine Resource in 2014 for U.S.A. Management in 2014–2015'' completed by NMFS Southwest Fisheries Science Center and the resulting Pacific sardine biomass estimate of 369,506 mt. Based on recommendations from its SSC and other advisory bodies, the Council recommended and NMFS is implementing an OFL of 39,210 mt, ABC of 35,792 mt, an ACL of 23,293 mt, and an ACT of 23,293 mt (equal to the ACL) for the 2014–2015 Pacific sardine fishing year. These catch specifications are based on the most recent stock assessment and the control rules established in the CPS FMP.

The Council also recommended, and NMFS is implementing, that the 23,293 mt ACT be reduced by 4,000 mt to account for potential harvest by the Quinault Indian Nation resulting in a final amount of 19,293 mt as the primary directed commercial fishing level to be allocated across the three seasonal allocation periods of July 1–September 14; September 15–December 31; and January 1–June 30. The Council also recommended and NMFS is implementing that incidental catch set asides be put in place for each allocation. The purpose of the incidental set-aside allotments and allowance of an incidental catch-only fishery is to allow for the restricted incidental landings of Pacific sardine in other fisheries, particularly other CPS fisheries, when a seasonal directed fishery is closed to reduce bycatch and allow for continued prosecution of other important CPS fisheries. These incidental set asides are allocated as shown in the following table, which also shows the adjusted directed harvest levels for each period in metric tons:

	July 1–September 14	September 15–December 31	January 1–June 30	Total
Total Seasonal Allocation	7,718 (40%)	4,823 (25%)	6,752 (35%)	19,293
Incidental Set Aside	500	500	500	1,500
Adjusted Directed Harvest Allocation	7,218	4,323	6,252	17,793

Additional inseason accountability measures (AM) are in place to ensure the fishery stays within the ACL. If during any of the seasonal allocation periods the applicable adjusted directed harvest allocation is projected to be taken, fishing will be closed to directed harvest and only incidental harvest will be allowed. For the remainder of the period, any incidental Pacific sardine landings will be counted against that period's incidental set-aside. As an additional AM, the incidental fishery will also be constrained to a 45 percent by weight incidental catch rate when Pacific sardine are landed with other CPS so as to minimize the targeting of Pacific sardine and reduce potential discard of sardine. In the event that an incidental set-aside is projected to be attained, the incidental fishery will be closed for the remainder of the period. If the set-aside is not fully attained or is exceeded in a given seasonal period, the directed harvest allocation in the following seasonal period will automatically be adjusted upward or downward accordingly to account for the excess or deficit. Additionally, if during any seasonal period the directed harvest allocation is not fully attained or is exceeded, then the following period's directed harvest total will be adjusted to account for the excess or deficit, as well.

If the total ACL or these apportionment levels for Pacific sardine are reached or are expected to be reached, the Pacific sardine fishery will be closed until it re-opens either per the allocation scheme or at the beginning of the next fishing season. The NMFS West Coast Regional Administrator will publish a notification in the **Federal Register** announcing the date of any closure to either directed or incidental fishing. Additionally, to ensure the regulated community is informed of any closure, NMFS will also make announcements through other means available, including fax, email, and mail to fishermen, processors, and state fishery management agencies.

As explained in the proposed rule (79 FR 31074), 4,000 mt of the harvest level is being set aside for use by the Quinault Indian Nation. NMFS will consult with Quinault Department of Fisheries staff and Quinault Fisheries Policy representatives prior to the end of the allocation period to determine whether any part of this set-aside is available for transfer into the non-tribal directed fishery.

In addition to implementing final specifications for Pacific sardine, this rule also announces the closure of the fishery as described above. While the closure of the Pacific sardine fishery usually occurs in a separate public notice, based on the best available information recently obtained from the fishery, the directed fishing harvest total

for the first allocation period (July 1 –September 15) has been reached. Fishing vessels must be at shore and in the process of offloading at the time of closure.

On May 30, 2014, a proposed rule was published for this action and public comments solicited (79 FR 31074). No comments were received. For further background information on this action please refer to the preamble of the proposed rule.

Detailed information on the fishery and the stock assessment are found in the report ''Assessment of the Pacific Sardine Resource in 2014 for U.S.A. Management in 2014–2015'' (see **ADDRESSES**).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law.

NMFS finds good cause under 5 U.S.C. 553(b)(B) to waive the requirement to provide prior notice and opportunity for public comment for the closure of directed fishing for the remainder of the July 1–September 14 allocation period because it is impracticable and contrary to the public interest. This rule establishes seasonal harvest allocations and the ability to restrict fishing when these allocations are approached or reached. These allocations are important mechanisms in preventing overfishing and managing the fishery at optimum yield while allowing fair and equitable opportunity to the resource by all sectors of the Pacific sardine fishery. Allowing for prior notice and public comment on the closure of the first seasonal allocation period of July 1–September implemented by this rule is contrary to the public interest because it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for Pacific sardine. Based on data through July 14, 2014, NMFS believes that the directed harvest allocation for this period will be attained shortly, and a delay in the implementation of the closure of the fishery may cause the fishery to exceed the first seasonal allocation. Based on current and expected harvest rates allowing for public notice and comment is impracticable

NMFS finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for both the establishment of these final harvest specifications for the 2014–2015 Pacific sardine fishing season and for the closure of the fishery. For the reasons set forth below, the immediate effectiveness of these final specifications and the closure of the fishery is necessary for the conservation and management of the Pacific sardine resource. A delay in the effectiveness of this rule would cause the fishery to exceed the seasonal allocation. Additionally, based on current data, NMFS believes that the directed harvest allocation for the period July 1 through September 14 will be attained shortly and a delay in the effectiveness of the closure of the fishery may cause the fishery to exceed the first seasonal allocation.

The seasonal allocation framework established in the FMP is an important mechanism to prevent overfishing, and is designed to allow fair and equitable opportunity to the resource by all sectors of the Pacific sardine fishery. Delaying the effective date of this rule and closing the fishery is therefore impracticable, because any delay would decrease the Pacific sardine stock. Delay is also contrary to the public interest, because additional reduction of Pacific sardine beyond the incidental take limit set out in this action would decrease the future stock of the species, as well as harvest limits, thereby reducing future potential catch of the stock along with the profits associated with those harvests.

To help keep the regulated community informed of this final rule NMFS will also announce this action through other means available, including fax, email, and mail to fishermen, processors, and state fishery management agencies. Additionally, NMFS will advise the CPS Advisory Subpanel, which is comprised of representatives from all sectors and regions of the sardine industry, including processors, fishermen, user groups, conservation groups and fishermen association representatives, of current landings as they become available and for the public at-large also post them on NMFS' West Coast Region Web site, *http://www.westcoast.fisheries.noaa.gov*.

These final specifications are exempt from review under Executive Order 12866.

No issues were raised by public comments in response to the Initial Regulatory Flexibility Analysis (IRFA) prepared pursuant to the Regulatory Flexibility Act (RFA) for this action or on the economic impacts of the rule generally. Therefore, the Final Regulatory Flexibility Analysis (FRFA) contains no changes from the IRFA. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. The results of the FRFA are stated below. For copies of the FRFA, please see the **ADDRESSES** section above.

The purpose of this action is to implement the 2014–2015 annual specifications for Pacific sardine in the U.S. EEZ off the Pacific coast including an ACT which is the primary commercial fishing target. If the total ACT or any of the seasonal apportionment levels for Pacific sardine are reached at any time, the Pacific sardine fishery will close until either it re-opens per the allocation scheme or the beginning of the next fishing season. There is no limit on the amount of catch that any single vessel can take during an allocation period or the year; the ACL and seasonal allocations are available until fully utilized by the entire CPS fleet.

On June 20, 2013, the U.S. Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398). The rule increased the size standard for finfish fishing from $4.0 million to $19.0 million, shellfish fishing from $4.0 million to $5.0 million, and other marine fishing from $4.0 million to $7.0 million. NMFS conducted its analysis for this action using the new size standards.

As stated above, the U.S. Small Business Administration now defines small businesses engaged in finfish fishing as those vessels with annual revenues of or below $19 million. Under the former, lower standards, all entities subject to this action in previous years were considered small entities, and under the new standards they continue to be considered small. The small entities that would be affected by the action are the vessels that compose the West Coast CPS small purse seine fleet. In 2013, there were approximately 81 vessels permitted to operate in the directed sardine fishery component of the CPS fishery off the U.S. West Coast; 58 vessels in the Federal CPS limited entry fishery off California (south of 39 N. lat.), and a combined 23 vessels in Oregon and Washington's state Pacific sardine fisheries. The average annual per vessel revenue in 2013 for the West Coast CPS finfish fleet was well below $19 million; therefore, all of these vessels therefore are considered small businesses under the RFA. Because each affected vessel is a small business, this action has an equal effect on all of these

small entities and therefore will impact a substantial number of these small entities in the same manner. Therefore, this final rule will not create disproportionate costs between small and large vessels/businesses.

The profitability of these vessels as a result of this action is based on the average Pacific sardine ex-vessel price per mt. NMFS used average Pacific sardine ex-vessel price per mt to conduct a profitability analysis because cost data for the harvesting operations of CPS finfish vessels was unavailable.

For the 2013 fishing year, approximately 64,000 mt were available for harvest by the directed fishery. Approximately 63,000 mt (approximately 7,100 mt in California and 56,000 mt in Oregon and Washington) of this allocation was harvested during the 2013 fishing season, for an estimated ex-vessel value of $14 million. Using these figures, the average 2013 ex-vessel price per mt of Pacific sardines was approximately $229 during that time period.

The initial non-tribal commercial fishing quota for the 2014–2015 Pacific sardine fishing season (July 1, 2014 through June 30, 2015) is 19,293 metric tons (mt). This is approximately 38,000 mt less than the equivalent allocation for 2013 and approximately 27,000 mt lower than the previous lowest level set in 2011. If the fleet were to take the entire 2014–2015 quota, and assuming a coastwide average ex-vessel price per mt of $218 (average of 2012 and 2013 ex-vessel), the potential revenue to the fleet would be approximately $3.87 million. Therefore the action will decrease small entities' potential profitability compared to last season, due to the lower quota this fishing season. The release of any unused portion of the 4,000 mt set-aside for the Quinault Indian Nation should they decide to do so might be used to supplement the amount available to the directed fishery as occurred in 2012 and 2013, thereby increasing the potential revenue to the fleet. Additionally, revenue derived from harvesting Pacific sardine is typically only one factor determining the overall revenue for a majority of the vessels that harvest Pacific sardine; as a result, the economic impact to the fleet from the action cannot be viewed in isolation. From year to year, depending on market conditions and availability of fish, most CPS/sardine vessels supplement their income by harvesting other species. Many vessels in California also harvest anchovy, mackerel, and in particular squid, making Pacific sardine only one component of a multi-species CPS fishery. For example, market squid have been readily available to the fishery in California over the last three years with total annual ex-vessel revenue averaging approximately $66 million over that time, compared to an annual average ex-vessel from sardine of $16 million over that same time period. Additionally, many sardine vessels that operate off of Oregon and Washington also fish for salmon in Alaska or squid in California during times of the year when sardine are not available.

These vessels typically rely on multiple species for profitability because abundance of sardine, like the other CPS stocks, is highly associated with ocean conditions and different times of the year, and therefore are harvested at various times and areas throughout the year. Because each species responds to ocean conditions in its own way, not all CPS stocks are likely to be abundant at the same time; therefore, as abundance levels and markets fluctuate, it has necessitated that the CPS fishery as a whole rely on a group of species for its annual revenues. Therefore, although there will be a potential reduction in sardine revenue for the small entities affected by this action as compared to the previous season, it is difficult to predict exactly how this reduction will impact overall annual revenue for the fleet.

No significant alternatives to this action exist that would accomplish the stated objectives of the applicable statutes and which would minimize any significant economic impact of this action on the affected small entities. The CPS FMP and its implementing regulations require NMFS to calculate annual harvest levels by applying the harvest control rule formulas to the current stock biomass estimate. Therefore, if the estimated biomass decreases or increases from one year to the next, so do the applicable quotas. Determining the annual harvest levels merely implements the established procedures of the FMP with the goal of continuing to provide expected net benefits to the nation, regardless of what the specific annual allowable harvest of Pacific sardine is determined to be.

There are no reporting, record-keeping, or other compliance requirements required by this final rule. Additionally, no other Federal rules duplicate, overlap or conflict with this final rule.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

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

Dated: July 15, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2014–17631 Filed 7–23–14; 11:15 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 120814338–2711–02]

RIN 0648–BE39

Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Biennial Specifications and Management Measures; Inseason Adjustments

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

ACTION: Final rule; inseason adjustments to biennial groundfish management measures.

SUMMARY: This final rule announces inseason changes to management measures in the Pacific Coast groundfish fisheries. This action, which is authorized by the Pacific Coast Groundfish Fishery Management Plan (PCGFMP), is intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: Effective 0001 hours (local time) July 25, 2014.

FOR FURTHER INFORMATION CONTACT: Colby Brady (West Coast Region, NMFS), phone: 206–526–6117, fax: 206–526–6736, *colby.brady@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.gpo.gov/fdsys/search/home.action,* or *http://federalregister.gov.* Background information and documents are available at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.* Copies of the final environmental impact statement (FEIS) for the 2013–2014 Groundfish Specifications and Management Measures are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–820–2280.

Background

The PCGFMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subparts C through G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS.

On November 14, 2012, NMFS published a proposed rule to implement the 2013–2014 harvest specifications and management measures for most species of the Pacific Coast groundfish fishery (77 FR 67974). The final rule to implement the 2013–2014 harvest specifications and management measures for most species of the Pacific Coast Groundfish Fishery was published on January 3, 2013 (78 FR 580).

The Council, in coordination with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, recommended the changes to current groundfish management measures at its June 18–June 25, 2014 meeting. Management measures are designed to meet two primary goals: To achieve to the extent possible, but not exceed, annual catch limits (ACLs) of target species; and to foster the rebuilding of overfished stocks by keeping harvest within their rebuilding ACLs. The Council recommended adjusting groundfish management measures to respond to updated fishery information and additional inseason management needs. Those changes to management measures are implemented in this action. The adjustments to fishery management measures are not expected to result in greater impacts to overfished species than originally projected through the end of the year.

Fishery Management Measures for the Limited Entry Fixed Gear (LEFG) and Open Access (OA) Sablefish Daily Trip Limit (DTL) Fisheries North of 36° N. Lat.

To increase harvest opportunities for the LEFG and OA fixed gear sablefish DTL fisheries north of 36° N. lat., the Council considered increases to trip limits. The Council's Groundfish Management Team (GMT) made model-based landings projections for the LEFG and OA fixed gear sablefish DTL fisheries north of 36° N. lat. for the remainder of the year. These projections were based on the most recent information available. The model predicted harvest of 88 percent (187.2 mt) of the LEFG harvest guideline (214 mt) and 45 percent (156.8 mt) of the OA harvest guideline (352 mt) under current trip limits. With the increase in trip limits, predicted harvest assuming medium ex-vessel price curves, is 91 percent (194.3 mt) of the LEFG harvest guideline (214 mt) and 66 percent (233.2 mt) of the OA harvest guideline (352 mt). Projections for the fixed gear sablefish fisheries south of 36° N. lat. were tracking within their targets and no inseason actions were considered.

Therefore, the Council recommended and NMFS is implementing trip limit changes for the LEFG and the OA sablefish DTL fisheries north of 36° N. lat. The trip limits for sablefish in the LEFG fishery north of 36° N. lat. increase from ''950 lb (431 kg) per week, not to exceed 2,850 lb (1,293 kg) per two months'' to ''1,000 lb (453 kg) per week, not to exceed 3,000 lb (1,361 kg) per two months'' beginning during period 4 through the end of the year.

The trip limits for sablefish in the OA sablefish DTL fishery north of 36° N. lat. are increased from ''300 lb (136 kg) per day, or one landing per week of up to 800 lb (363 kg), not to exceed 1,600 lb (726 kg) per two months'' to ''350 lb (159 kg) per day, or one landing per week of up to 1,600 lb (726 kg), not to exceed 3,200 lb (1,452 kg) per two months'' during period 4 through the end of the year.

Classification

This final rule makes routine inseason adjustments to groundfish fishery management measures, based on the best available information, consistent with the PCGFMP and its implementing regulations.

This action is taken under the authority of 50 CFR 660.60(c) and is exempt from review under Executive Order 12866.

The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, West Coast Region, NMFS, during business hours.

NMFS finds good cause to waive prior public notice and comment on the revisions to groundfish management measures under 5 U.S.C. 553(b) because notice and comment would be impracticable and contrary to the public interest. Also, for the same reasons, NMFS finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective July 25, 2014.

At the June Council meeting, the Council recommended that these changes be implemented as quickly as possible during the July-August two-month cumulative limit period. There was not sufficient time after that meeting to draft this document and undergo proposed and final rulemaking before these actions need to be in effect. For the actions to be implemented in this final rule, affording the time necessary for prior notice and opportunity for public comment would prevent NMFS from managing fisheries using the best available science to approach, without exceeding, the ACLs for federally managed species in accordance with the PCGFMP and applicable law. The adjustments to management measures in this document affect commercial fisheries in Washington, Oregon and California. These adjustments to management measures must be implemented as quickly as possible during the July-August 2-month cumulative limit period to allow LEFG and OA fixed gear fishermen an opportunity to harvest their limits for sablefish without exceeding the ACL north of 36° N. lat. It would be contrary to the public interest to delay implementation of these changes until after public notice and comment, because making this regulatory change by July 25, 2014, allows harvest as intended by the Council, consistent with the best scientific information available. These changes allow additional harvest in fisheries that are important to coastal communities while continuing to prevent ACLs of overfished and target species from being exceeded.

No aspect of this action is controversial, and changes of this nature were anticipated in the biennial harvest specifications and management measures established for 2013–2014.

Delaying these changes would also keep management measures in place that are not based on the best available information. Such delay would impair achievement of the PCGFMP goals and objectives of managing for appropriate harvest levels while providing for year-round fishing and marketing opportunities.

Accordingly, for the reasons stated above, NMFS finds good cause to waive prior notice and comment and to waive the delay in effectiveness.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian Fisheries.

Dated: July 22, 2014.

Alan D. Risenhoover,

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

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.*

■ 2. Tables 2 (North) and 2 (South) to part 660, subpart E, are revised to read as follows:

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Table 2 (North) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table

8012014

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:							
1	North of 46°16' N. lat.	shoreline - 100 fm line[1/]					
2	46°16' N. lat. - 42°00' N. lat.	30 fm line[1/] - 100 fm line[1/]					
3	42°00' N. lat. - 40°10' N. lat.	20 fm depth contour - 100 fm line[1/]					
See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
4	**Minor slope rockfish[2/] & Darkblotched rockfish**	4,000 lb/ 2 months					
5	**Pacific ocean perch**	1,800 lb/ 2 months					
6	**Sablefish**	950 lb/ week, not to exceed 2,850 lb/ 2 months			1,000 lb/ week, not to exceed 3,000 lb/ 2 months		
7	**Longspine thornyhead**	10,000 lb/ 2 months					
8	**Shortspine thornyhead**	2,000 lb/ 2 months			2,500 lb/ 2 months		
9	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line, are not subject to the RCAs.					
10	**Arrowtooth flounder**						
11	**Petrale sole**						
12	**English sole**						
13	**Starry flounder**						
14	**Other flatfish[3/]**						
15	**Whiting**	10,000 lb/ trip					
16	**Minor shelf rockfish[2/], Shortbelly, Widow & Yellowtail rockfish**	200 lb/ month					
17	**Canary rockfish**	CLOSED					
18	**Yelloweye rockfish**	CLOSED					
19	**Minor nearshore rockfish & Black**						
20	North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue rockfish[4/]					
21	42°00' N. lat. - 40°10' N. lat.	8,500 lb/ 2 months, of which no more than 1,200 lb of which may be species other than black rockfish					
22	**Lingcod[5/]**	CLOSED		800 lb/ 2 months		400 lb/ month	CLOSED
23	**Pacific cod**	1,000 lb/ 2 months					
24	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
25	**Longnose skate**	Unlimited					
26	**Other fish[6/]**	Unlimited					

TABLE 2 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

6/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon are included in the trip limits for "other fish."

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 2 (South) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table

8012014

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	40°10' N. lat. - 34°27' N. lat.	30 fm line[1/] - 150 fm line[1/]					
2	South of 34°27' N. lat.	60 fm line[1/] - 150 fm line[1/] (also applies around islands)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
3	**Minor slope rockfish[2/] & Darkblotched rockfish**	40,000 lb/ 2 months, of which no more than 1,375 lb may be blackgill rockfish					
4	**Splitnose rockfish**	40,000 lb/ 2 months					
5	**Sablefish**						
6	40°10' N. lat. - 36°00' N. lat.	950 lb/ week, not to exceed 2,850 lb/ 2 months			1,000 lb/ week, not to exceed 3,000 lb/ 2 months		
7	South of 36°00' N. lat.	2,000 lb/ week					
8	**Longspine thornyhead**	10,000 lb/ 2 months					
9	**Shortspine thornyhead**						
10	40°10' N. lat. - 34°27' N. lat.	2,000 lb/ 2 months			2,500 lb/ 2 months		
11	South of 34°27' N. lat.	3,000 lb/ 2 months					
12	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line, are not subject to the RCAs.					
13	**Arrowtooth flounder**						
14	**Petrale sole**						
15	**English sole**						
16	**Starry flounder**						
17	**Other flatfish[3/]**						
18	**Whiting**	10,000 lb/ trip					
19	**Minor shelf rockfish[2/], Shortbelly, Widow rockfish (including Bocaccio and Chilipepper between 40°10' - 34°27' N. lat.)**						
20	40°10' N. lat. - 34°27' N. lat.	Minor shelf rockfish, shortbelly, widow rockfish, bocaccio & chilipepper: 2,500 lb/ 2 months, of which no more than 500 lb may be any species other than chilipepper.					
21	South of 34°27' N. lat.	3,000 lb/ 2 months	CLOSED	3,000 lb/ 2 months	4,000 lb/ 2 months		
22	**Chilipepper**						
23	40°10' N. lat. - 34°27' N. lat.	Chilipepper included under minor shelf rockfish, shortbelly, widow rockfish and bocaccio limits - - See above					
24	South of 34°27' N. lat.	2,000 lb/ 2 months, this opportunity only available seaward of the non-trawl RCA					
25	**Canary rockfish**	CLOSED					
26	**Yelloweye rockfish**	CLOSED					
27	**Cowcod**	CLOSED					
28	**Bronzespotted rockfish**	CLOSED					
29	**Bocaccio**						
30	40°10' N. lat. - 34°27' N. lat.	Bocaccio included under Minor shelf rockfish, shortbelly, widow rockfish & chilipepper limits - - See above					
31	South of 34°27' N. lat.	300 lb/ 2 months	CLOSED	300 lb/ 2 months	500 lb/ 2 months		

TABLE 2 (South)

Table 2 (South). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC	
32	**Minor nearshore rockfish & Black rockfish**							
33	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	1,000 lb/ 2 months	
34	Deeper nearshore							
35	40°10' N. lat. - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months	900 lb/ 2 months		1,000 lb/ 2 months	
36	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months				
37	California scorpionfish	1,200 lb/ 2 months	CLOSED	1,200 lb/ 2 months	1,200 lb/ 2 months			
38	**Lingcod**[4/]	CLOSED		800 lb/ 2 months			400 lb/ month	CLOSED
39	**Pacific cod**	1,000 lb/ 2 months						
40	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months			
41	**Longnose skate**	Unlimited						
42	**Other fish**[6/]	Unlimited						

TABLE 2 (South)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for minor slope rockfish. Blackgill rockfish have a species specific trip sub-limit within the minor slope rockfish cumulative limit. Yellowtail rockfish are included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

5/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon and longnose skate are included in the trip limits for "other fish."

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 3. Table 3 (North) and 3 (South) to part 660, subpart F, are revised to read as follows:

Table 3 (North) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table

8012014

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm line[1/]					
2	46°16' N. lat. - 42°00' N. lat.	30 fm line[1/] - 100 fm line[1/]					
3	42°00' N. lat. - 40°10' N. lat.	20 fm depth contour - 100 fm line[1/]					
	See §§660.60, 660.330 and 660.333 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
4	**Minor slope rockfish[2/] & Darkblotched rockfish**	Per trip, no more than 25% of weight of the sablefish landed					
5	**Pacific ocean perch**	100 lb/ month					
6	**Sablefish**	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 1,600 lb/ 2 months			350 lb/ day, or 1 landing per week of up to 1,600 lb, not to exceed 3,200 lb/ 2 months		
7	**Thornyheads**	CLOSED					
8	**Dover sole**	3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs.					
9	**Arrowtooth flounder**						
10	**Petrale sole**						
11	**English sole**	South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
12	**Starry flounder**						
13	**Other flatfish[3/]**						
14	**Whiting**	300 lb/ month					
15	**Minor shelf rockfish[2/], Shortbelly, Widow & Yellowtail rockfish**	200 lb/ month					
16	**Canary rockfish**	CLOSED					
17	**Yelloweye rockfish**	CLOSED					
18	**Minor nearshore rockfish & Black rockfish**						
19	North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish					
20	42°00' N. lat. - 40°10' N. lat.	8,500 lb/ 2 months, of which no more than 1,200 lb may be species other than black rockfish					
21	**Lingcod[5/]**	CLOSED		400 lb/ month			CLOSED
22	**Pacific cod**	1,000 lb/ 2 months					
23	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
24	**Longnose skate**	Unlimited					
25	**Other fish[6/]**	Unlimited					

TABLE 3 (North)

Table 3 (North). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
26	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish and lingcod, as described below)*						
27	North	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. Salmon trollers may retain and land up to 1 lingcod per 15 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. This limit only applies during times when lingcod retention is allowed, and is not "CLOSED." This limit is within the per month limit for lingcod described in the table above, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.					
28	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*						
29	North	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 3 (North) cont'd

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for minor shelf rockfish. Splitnose rockfish is included in the trip limits for minor slope rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

6/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon are included in the trip limits for "other fish."

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table

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		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	40°10' N. lat. - 34°27' N. lat.	30 fm line[1/] - 150 fm line[1/]					
2	South of 34°27' N. lat.	60 fm line[1/] - 150 fm line[1/] (also applies around islands)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
3	**Minor slope rockfish[2/] & Darkblotched rockfish**	10,000 lb/ 2 months, of which no more than 475 lb may be blackgill rockfish					
4	**Splitnose rockfish**	200 lb/ month					
5	**Sablefish**						
6	40°10' N. lat. - 36°00' N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 1,600 lb/ 2 months			350 lb/ day, or 1 landing per week of up to 1,600 lb, not to exceed 3,200 lb/ 2 months		
7	South of 36°00' N. lat.	300 lb/ day, or 1 landing per week of up to 1,600 lb, not to exceed 3,200 lb/ 2 months					
8	**Thornyheads**						
9	40°10' N. lat. - 34°27' N. lat.	CLOSED					
10	South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months					
11	**Dover sole**	3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs.					
12	**Arrowtooth flounder**						
13	**Petrale sole**						
14	**English sole**	South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
15	**Starry flounder**						
16	**Other flatfish[3/]**						
17	**Whiting**	300 lb/ month					
18	**Minor shelf rockfish[2/], Shortbelly, Widow rockfish and Chilipepper**						
19	40°10' N. lat. - 34°27' N. lat.	300 lb/ 2 months	CLOSED	200 lb/ 2 months		300 lb/ 2 months	
20	South of 34°27' N. lat.	750 lb/ 2 months		750 lb/ 2 months	1,000 lb/ 2 months		
21	**Canary rockfish**	CLOSED					
22	**Yelloweye rockfish**	CLOSED					
23	**Cowcod**	CLOSED					
24	**Bronzespotted rockfish**	CLOSED					
25	**Bocaccio**						
26	40°10' N. lat. - 34°27' N. lat.	200 lb/ 2 months	CLOSED	100 lb/ 2 months		200 lb/ 2 months	
27	South of 34°27' N. lat.	100 lb/ 2 months		100 lb/ 2 months	200 lb/ 2 months		

TABLE 3 (South)

Table 3 (South). Continued

TABLE 3 (South) cont'd

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
28	**Minor nearshore rockfish & Black rockfish**						
29	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	1,000 lb/ 2 months
30	Deeper nearshore						
31	40°10' N. lat. - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months	900 lb/ 2 months		1,000 lb/ 2 months
32	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months			
33	California scorpionfish	1,200 lb/ 2 months	CLOSED	1,200 lb/ 2 months			
34	**Lingcod**[4/]	CLOSED		400 lb/ month			CLOSED
35	**Pacific cod**	1,000 lb/ 2 months					
36	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
37	**Longnose skate**	Unlimited					
38	**Other fish**[5/]	Unlimited					
39	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**						
40	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**						
41	*40°10' N. lat. - 38°00' N. lat.*	*100 fm line*[1/] *- 200 fm line*[1/]	*100 fm line*[1/] *- 150 fm line*[1/]				*100 fm line*[1/] *- 200 fm line*[1/]
42	*38°00' N. lat. - 34°27' N. lat.*	*100 fm line*[1/] *- 150 fm line*[1/]					
43	*South of 34°27' N. lat.*	*100 fm line*[1/] *- 150 fm line*[1/] *along the mainland coast; shoreline - 150 fm line*[1/] *around islands*					
44		Groundfish: 300 lb/trip. Species-specific limits described in the table above also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31).					
45	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*						
46	South	Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for minor slope rockfish. Blackgill rockfish have a species specific trip sub-limit within the minor slope rockfish cumulative limits. Yellowtail rockfish is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

5/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skate), ratfish, morids, grenadiers, and kelp greenling. Cabezon are included in the trip limits for "other fish."

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

[FR Doc. 2014–17579 Filed 7–22–14; 4:15 p.m.]

BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 79, No. 143
Friday, July 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

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 810

United States Standards for Barley

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing to revise the U.S. Standards for Barley (barley standards) under the U.S. Grain Standards Act (USGSA) by revising the Definitions of Other Terms to remove Blue Malting barley and the reference to kernels with white aleurone layers. Further GIPSA will revise the standards to add the factors injured-by-mold and mold-damaged kernels. The proposal also recommends revisions to the grade and grade requirements for Two-rowed Malting Barley, Six-rowed Malting barley, and Six-rowed Blue Malting barley. These proposed changes will help to facilitate the marketing of barley.

DATES: Comments must be received on or before September 23, 2014.

ADDRESSES: You may submit written or electronic comments on this proposed rule to:

- *Mail:* Irene Omade, GIPSA, USDA, STOP 3642, 1400 Independence Avenue SW., Room 2530–B, Washington, DC 20250–3604.
- *Fax:* (202) 690–2173.
- *Internet:* Go to *http://www.regulations.gov* and follow the on-line instruction for submitting comments.

All comments will become a matter of public record and should be identified as ''U.S. barley standards proposed rule comments,'' making reference to the date and page number of this issue of the **Federal Register**. All comments received become the property of the Federal government, are a part of the public record, and will generally be posted to *www.regulations.gov* without change. If you send an email comment directly to GIPSA without going through *www.regulations.gov,* or you submit a comment to GIPSA via fax, the originating email address or telephone number will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. Also, all personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

Electronic submissions should avoid the use of special characters, avoid any form of encryption, and be free of any defects or viruses, since these may prevent GIPSA from being able to read and understand, and thus consider your comment.

GIPSA will post a transcript or report summarizing each substantive oral comment that we receive about this proposed rule. This would include comments about this rule made at any public meetings hosted by GIPSA during the comment period, unless GIPSA publically announces otherwise.

All comments will also be available for public inspection at the above address during regular business hours (7 CFR 1.27(b)). Please call the GIPSA Management and Budget Services support staff (202) 720–8479 for an appointment to view the comments.

FOR FURTHER INFORMATION CONTACT: Patrick McCluskey at GIPSA, USDA, 10383 N. Ambassador Drive, Kansas City, MO, 64153; Telephone (816) 659–8403; Fax Number (816) 872–1258; email *Patrick.J.McCluskey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Barley is defined in the U.S. Standards for Barley as grain that, before the removal of dockage, consists of 50 percent or more of whole kernels of cultivated barley (*Hordeum vulgare* L.) and not more than 25 percent of other grains for which standards have been established under the USGSA. The term ''barley'' as used in these standards does not include hull-less barley or black barley.

In 2012, U.S. barley producers harvested 3.2 million acres of barley producing 220.3 million bushels of the grain. Of all the barley planted, more than 60 percent were malting barley types. Beer production in the United States (U.S.) accounts for approximately 55 percent of total domestic use (2008–2012 average), feed and industrial uses account for about 40 percent of domestic use (2008–2012 average), while whiskey, food and seed account for about 6 percent of domestic use (2008–2012 average). Barley is exported for feed and malting purposes, typically accounting for less than five percent of total barley usage.

Under the USGSA (7 U.S.C. 76), GIPSA is authorized to establish and maintain the standards for barley and other grains regarding kind, class, quality, and condition. The barley standards facilitate the marketing of barley, define U.S. barley quality, and define commonly used industry terms in the domestic and global marketplace. Also, the barley standards contain basic principles such as the basis of determination used for a particular quality factor analysis, as well as specifying grades, grade requirements, special grades, and special grade requirements. The barley standards, which were established on August 24, 1926, were last revised in 1997, and appear in the USGSA regulations at 7 CFR 810.201 through 810.207.

Discussion of Comments and Proposed Action

On October 4, 2011, GIPSA published an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** (76 FR 61287) requesting public comment on what revisions, if any, are needed to the current barley standards. GIPSA received four comments from two barley producer associations, one malting industry association, and one beer brewing company. The malting industry association provided a comment stating that two-rowed and six-rowed malting barley are used interchangeably by the malting industry, thus the grades and grade standards should be harmonized for most factors, excluding test weight and thin barley. The comment from a beer brewing company stated that malting quality specifications which are currently applicable only to two-rowed malting barley should be extended to six-rowed malting barley, because the brewing industry uses both types. Additionally, the brewing company stated that they fully supported the

comments of the malting barley industry association. Comments from two North Dakota barley producers groups mirrored the comments of the malting barley industry association with regard to harmonizing the standards, and addressed other issues which will be discussed herein.

The malting barley industry association stated that distinctions between two- and six-rowed varieties are not generally warranted, but that distinctions for test weight and percent thin barley are warranted. Two-rowed and six-rowed malting barley have different test weight patterns that are under genetic control and influenced by environment.

All commenters recommended that grade limits for two-rowed and six-rowed malting barley be identical for all grade determining factors except test weight and thin barley, which should remain unchanged. U.S. malting barley manufacturers and users do not distinguish between two-rowed and six-rowed malting barley based on the current barley standards, but view both two-rowed and six-rowed malting barley as functionally equivalent.

All commenters stated that Wild Oats should be included as a grade determining factor for Six-rowed Malting barley. Likewise all commenters stated that Damaged kernels, as well as Other grains, should be included as a grade determining factor for Two-rowed Malting barley. All commenters stated that the grade factors Suitable malting type, Sound barley, and Skinned and broken kernels should all be harmonized for Two-rowed and Six-rowed Malting barley. Further, all commenters agreed that these specific changes are needed in the barley standards.

GIPSA believes that stakeholders in the malting barley industry are well-informed with respect to production, functionality, and quality issues related to malting barley. GIPSA believes the recommended revisions will facilitate the marketing of barley and accordingly, will propose amendments to the malting barley standards to make the recommended revisions. To harmonize two-rowed and six-rowed malting barley grade factors and grade limits, GIPSA recognizes the definitions of Six-rowed Malting barley and Two-rowed Malting barley must be also be consistent. Accordingly, GIPSA will propose revising the definition of Six-rowed Malting barley to mirror the definition of Two-rowed Malting barley, with the exception of test weight and percent thins.

All commenters recommended removing Six-rowed Blue Malting barley as a subclass of malting barley because (1) blue aleurone barley is no longer used by the malting and brewing industry in the U.S. and (2) no blue aleurone malting varieties are being grown for export, and (3) U.S. production of blue aleurone malting barley is minimal. GIPSA agrees and will propose revising the malting barley standards to remove Six-rowed Blue Malting barley as a subclass of malting barley.

GIPSA received identical comments from two North Dakota barley producer groups. Both producer groups questioned why the definitions of Frost-damaged kernels, Heat-damaged kernels, and Mold-damaged kernels included the words ''other grains, and wild oats'' in their definitions, while the definitions of Injured-by-frost, Injured-by-heat, and Injured-by-mold do not include other grains and wild oats. Both commenters stated that the terminology utilized in malting factors is quasi-redundant and can initiate misunderstanding. They recommended removing other grains and wild oats from all damage definitions, so as to focus attention on heat, frost, or mold damage to barley kernels rather than damage to components other than barley (i.e., other grains and wild oats). Barley is unique in that it is the only grain which has a definition for frost-damaged kernels and mold-damaged kernels in the standard. (In other grains, these damages are determined based on Visual Reference Images.)

The inclusion of ''other grains'' in the definition of heat-damaged kernels in barley is consistent with the definition of heat-damaged kernels in oats, rye, sorghum, triticale, and wheat. The purpose of including of ''other grains'' in the damage definition of certain grain standards is to hinder blending of inferior quality grains into the primary grain being presented for inspection. Some grains were more likely to have ''other grains'' blended into them, which explains why not all grains for which standards exist include ''other grains'' in the damage definition. The standards should promote increasing quality. Accordingly, GIPSA will not propose any revisions to the barley standards based on the two comments.

GIPSA received comments from the two producer groups recommending that consideration should be given to establishing specific grades for hull-less barley. Hull-less barley is a specialized plant wherein the hull does not adhere to the grain. In the regulations at 810.201, the definition of barley states, ''The term ''barley'' as used in these standards does not include hull-less barley or black barley.'' Hull-less barley is considered Not Standardized Grain, counted as ''other grain'' when encountered in barley, and counted against ''sound barley''.

In a comment unrelated to hull-less barley, the malting industry association pointed out that the production of malt for brewing requires barley that is sound, and with an intact hull. The malting and brewing industries are the largest users of U.S. barley. The hull of the barley kernel plays a critical role in the malting process. The malt manufacturing industry would encounter processing problems if hull-less barley was counted as barley, even if only a small percentage of hull-less barley kernels were comingled with malting types. This commenter also addressed ''malting factors'' that are not part of this rulemaking.

GIPSA's Program Directive 9180.65 provides inspection and certification procedures for hull-less barley, so applicants for service can receive certified results on factors of interest. Given these facts, and absent a market signal from end-users, GIPSA will not propose revisions to the barley standards establishing grades for hull-less barley.

All commenters stated that certain revisions were needed in the inspection instructions in the Barley chapter of Grain Inspection Handbook 2. While inspection instructions are not included in the regulations, GIPSA will review the inspection instructions in Handbook 2, in consideration of the comments, separately from this rulemaking.

GIPSA is issuing this proposed rule to invite comments from all interested persons on how GIPSA can further enhance the barley standards to better facilitate the marketing of barley.

GIPSA proposes to revise Section 810.202 *Definition of other terms* (c)(1) by amending (i) Six-rowed Malting barley to remove the reference to kernels with white aleurone layers and adding maximum percentages for injured-by-mold and mold-damage kernels, removing (ii) Six-rowed Blue Malting barley, and renumbering (iii) Two-rowed Malting barley to become (ii).

GIPSA proposes to revise Section 810.204 *Grade and Grade Requirements for Six-rowed Malting barley and Six-rowed Blue Malting barley* by removing references to Six-rowed Blue malting barley, adding Wild Oats as a grade determining factor, increasing the minimum percent of suitable malting type at grades 1 and 2, and increasing the minimum percent of sound barley at all grades.

GIPSA proposes to revise Section 810.205 *Grade and Grade Requirements for Two-rowed Malting barley* by adding

Damaged kernels as a grade determining factor, adding Other grains as a grade determining factor, and reducing the maximum percent of Skinned and broken kernels at grades 1, 2, and 3.

Pursuant to section 4(b)(1) of the USGSA, as amended (7 U.S.C. 76(b)(1)), no standards established, or amendments or revocations of the standards, are to become effective less than 1 calendar year after promulgation unless, in the judgment of the Secretary of Agriculture, the public health, interest, or safety require that they become effective sooner.

Executive Order 12866, 13563, and Regulatory Flexibility Act

This rule has been determined to be exempt for the purposes of Executive Orders 12866 and 13563, and therefore has not been reviewed by the Office of Management and Budget (OMB).

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), GIPSA has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The Small Business Administration (SBA) defines small businesses by their North American Industry Classification System Codes (NAICS).[1] This proposed rule affects customers of GIPSA's official inspection and weighing services in the domestic and export grain markets such as grain elevators/merchants (NAICS 424510), those in the malt manufacturing industry (NAICS 311213), and official grain inspection agencies.

GIPSA is proposing to revise the barley standards in the Definitions of Other Terms by removing Six-rowed Blue Malting barley and the reference to kernels with white aleurone layers. In addition, the proposed change will add injured-by-mold and mold-damaged kernels to the definition of Six-rowed Malting barley. The definition change also revises the grade and grade requirements for Two-rowed Malting barley. Further, the grade and grade requirements for Six-rowed Malting barley and Six-rowed Blue Malting barley will be revised.

Under the provisions of the USGSA, grain exported from the U.S. must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA at 40 export facilities, by delegated States at 11 facilities, and seven facilities for U.S. grain transshipped through Canadian ports. All of these facilities are owned by multi-national corporations, large cooperatives, or public entities that do not meet the requirements for small entities established by the SBA. Further, the regulations are applied equally to all entities. The USGSA (7 U.S.C. 87f–1) requires the registration of all persons engaged in the business of buying grain for sale in foreign commerce. In addition, those persons who handle, weigh, or transport grain for sale in foreign commerce must also register. Section 800.30 of the USGSA regulations (7 CFR 800.30) define a foreign commerce grain business as persons who regularly engage in buying for sale, handling, weighing, or transporting grain totaling 15,000 metric tons or more during the preceding or current calendar year. At present, there are 129 registrants registered to export grain. All are considered to be large businesses.

GIPSA also provides domestic and miscellaneous inspection and weighing services at other than export locations. Such services are provided by 53 official state and private agencies. Approximately 217 different applicants receive domestic inspection services each year and approximately 150 different locations receive track scale tests as a miscellaneous service each year.

Most users of the official inspection and weighing services do not meet the requirements for small entities nor are the agencies that provide such services. Further, GIPSA is required by statute to make services available and to recover, as nearly as practicable, the costs of providing such services. There would be no additional reporting, record keeping, or other compliance requirements imposed upon small entities as a result of this proposed rule. Further, GIPSA has not identified any other Federal rules which may duplicate, overlap or conflict with this proposed rule. GIPSA has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the RFA.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. The USGSA provides in section 87g that no subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the USGSA. Otherwise, this rule would not preempt any State or local laws, or regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Executive Order 13175

This proposed rule has been reviewed with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. GIPSA has received no requests for official services for barley from any Tribal Government. Therefore, GIPSA believes that this rule would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Paperwork Reduction Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements included in this proposed rule previously has been approved by the OMB under control number 0580–0013.

GIPSA is committed to complying with the Government Paperwork Elimination Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to maximum extent possible.

E-Government Compliance

GIPSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 810

Export, Grain.

For reasons set out in the preamble, GIPSA proposes to amend 7 CFR part 810 as follows:

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

■ 1. The authority citation for part 810 continues to read as follows:

Authority: 7 U.S.C. 71–87k.

■ 2. In § 810.202, revise paragraph (c)(1) to read as follows:

§ 810.202 Definition of other terms.

* * * * *

(c) *Classes.* There are two classes of barley: Malting barley and Barley.

(1) *Malting barley.* Barley of a six-rowed or two-rowed malting type. The class Malting barley is divided into the following two subclasses:

[1] See: *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

(i) *Six-rowed Malting barley.* Barley that has a minimum of 95.0 percent of a six-rowed suitable malting type that contains not more than 1.9 percent injured-by-frost kernels, 0.4 percent frost-damaged kernels, 0.2 percent injured-by-heat kernels, and 0.1 percent heat-damaged kernels, 1.9 percent injured-by-mold kernels, and 0.4 percent mold-damaged kernels. Six-rowed Malting barley shall not be infested, blighted, ergoty, garlicky, or smutty as defined in § 810.107(b) and § 810.206.

(ii) *Two-rowed Malting barley.* Barley that has a minimum of 95.0 percent of a two-rowed suitable malting type that contains not more than 1.9 percent injured-by-frost kernels, 0.4 percent frost-damaged kernels, 0.2 percent injured-by-heat kernels, 0.1 percent heat-damaged kernels, 1.9 percent injured-by-mold kernels, and 0.4 percent mold-damaged kernels. Two-rowed Malting barley shall not be infested, blighted, ergoty, garlicky, or smutty as defined in § 810.107(b) and § 810.206.

* * * * *

§ 810.204 [Amended]

■ 3. Section 810.204 is revised to read as follows:

§ 810.204 Grades and grade requirements for Six-rowed Malting barley.

Grade	Minimum limits of—				Maximum limits of—				
	Test weight per bushel (pounds)	Suitable malting types (percent)	Sound barley [1] (percent)	Damaged kernels [1] (percent)	Wild oats (percent)	Foreign material (percent)	Other grains (percent)	Skinned and broken kernels (percent)	Thin barley (percent)
U.S. No. 1	47.0	97.0	98.0	2.0	1.0	0.5	2.0	4.0	7.0
U.S. No. 2	45.0	97.0	98.0	3.0	1.0	1.0	3.0	6.0	10.0
U.S. No. 3	43.0	95.0	96.0	4.0	2.0	2.0	5.0	8.0	15.0
U.S. No. 4	43.0	95.0	93.0	5.0	3.0	3.0	5.0	10.0	15.0

[1] Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels or considered against sound barley.

Note: Malting barley shall not be infested in accordance with § 810.107(b) and shall not contain any special grades as defined in § 810.206. Six-rowed Malting barley varieties not meeting the requirements of this section shall be graded in accordance with standards established for the class Barley.

§ 810.205 [Amended]

■ 4. Section 810.205 is revised to read as follows:

§ 810.205 Grades and grade requirements for Two-rowed Malting barley.

Grade	Minimum limits of—				Maximum limits of—				
	Test weight per bushel (pounds)	Suitable malting types (percent)	Sound barley [1] (percent)	Damaged kernels [1] (percent)	Wild Oats (percent)	Foreign material (percent)	Other grains (percent)	Skinned and broken kernels (percent)	Thin barley (percent)
U.S. No. 1	50.0	97.0	98.0	2.0	1.0	0.5	2.0	4.0	5.0
U.S. No. 2	48.0	97.0	98.0	3.0	1.0	1.0	3.0	6.0	7.0
U.S. No. 3	48.0	95.0	96.0	4.0	2.0	2.0	5.0	8.0	10.0
U.S. No. 4	48.0	95.0	93.0	5.0	3.0	3.0	5.0	10.0	10.0

[1] Injured-by-frost kernels and injured-by-mold kernels are not considered damaged kernels or considered against sound barley.

Note: Malting barley shall not be infested in accordance with § 810.107(b) and shall not contain any special grades as defined in § 810.206. Two-rowed Malting barley varieties not meeting the requirements of this section shall be graded in accordance with standards established for the class Barley.

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2014–17258 Filed 7–24–14; 8:45 am]

BILLING CODE 3410–KD–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[NRC–2009–0279]

RIN 3150–AJ29

Radiation Protection

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing this advance notice of proposed rulemaking (ANPR) to obtain input from stakeholders on the development of a draft regulatory basis. The draft regulatory basis would support potential changes to the NRC's current radiation protection regulations. The goal of this effort is to achieve greater alignment between the NRC's radiation protection regulations and the 2007 recommendations of the International Commission on Radiological Protection (ICRP) contained in ICRP Publication 103 (2007). Through this ANPR, the NRC has identified specific questions and issues with respect to a possible revision of the NRC's radiation protection requirements. Stakeholder comments, including responses to the specific questions, will be considered by the NRC staff when it develops the draft regulatory basis. In a separate and related activity, the NRC staff will be preparing an ANPR concerning the NRC's design objectives governing dose assessments for radioactive effluents from light-water-cooled nuclear power reactors, which should be published for public comment during the public comment period for this ANPR. The NRC plans to hold a series of public meetings to promote full understanding of the contemplated action and facilitate public comment.

DATES: Submit comments by November 24, 2014. Comments received after this date will be considered if it is practical to do so, but the NRC is only able to ensure consideration of comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

• *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2009–0279. 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.

• *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.

• *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

• *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

• *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Cardelia Maupin, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2312; email: *Cardelia.Maupin@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2009–0279 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2009–0279.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain 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 ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.

• *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–2009–0279 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

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

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

The NRC's primary radiation protection regulations are in part 20 of Title 10 of the *Code of Federal Regulations* (10 CFR). The purpose of these regulations is to establish standards of protection for both members of the public and occupational workers from ionizing radiation resulting from activities conducted under licenses issued by the NRC. These standards are implemented through the radiation protection requirements in the 10 CFR part 20 regulations that NRC licensees must follow. The NRC's predecessor agency, the Atomic Energy Commission (AEC), initially issued its regulations for radiation protection in the **Federal Register** (FR) on January 29, 1957 (22 FR 548). The regulations substantially followed the recommendations of the first official publication of the then National Committee on Radiation Protection and Measurement, which was renamed in 1964 when it was officially charted by the U.S. Congress (Pub. L. 88–376) and is now known as the National Council on Radiation Protection and Measurements (NCRP). The NCRP report was published in 1953 by the Subcommittee on Permissible Internal Dose, *Handbook 52,* ''Maximum Permissible Amounts of Radioisotopes in the Human Body and Maximum Permissible Concentrations in Air and Water'' (NCRP 1953).[1] The ICRP essentially adopted the NCRP 1953 recommendations in ''Recommendations of the International Commission on Radiological Protection,'' December 1, 1954,'' except for one major deviation. The ICRP was the first to recommend limiting radiation doses to persons other than radiation workers, that is, to members of the public. It recommended a dose one tenth of that acceptable for occupational workers, which the NCRP later adopted in 1958.[2]

Throughout the mid to late 1950s, the ICRP and the NCRP adopted similar recommendations. For example, in April 1956, the ICRP considered changes to its dosimetry system that included recommendations for accumulated internal dose limits for the critical organs of the human body. The ICRP issued a recommendation of 50 mSv (5 rem) per year for the whole body, gonads, lens of the eye, and active bone marrow of occupational workers. This recommendation was later adopted by both the NCRP and the ICRP (NCRP 1957 and ICRP 1958).[3] The AEC's 1957

[1] ''A Review of the History of U.S. Radiation Protection Regulations, Recommendations, and Standards,'' by C.G. Jones, *Health Physics Journal,* February 2005, Vol. 88, No. 2, pages 105–126 (ADAMS Accession No. ML050400427), ''1956 Report on Amendments during 1956 to the 1954 Recommendations of the International Commission on Radiological Protection,'' 1956, ICRP, and ''Maximum Permissible Radiation Exposure to Man, A preliminary statement of the National Committee on Radiation Protection and Measurements,'' 1957.

[2] ''1954 Recommendations of the International Commission on Radiological Protection,'' 1955, and ''Permissible Dose: A History of Radiation Protection in the Twentieth Century,'' by Samuel Walker, 2000, page 12.

[3] The recommended ICRP reference format is: ''Recommendations of the International Commission on Radiological Protection, ICRP Publication 1 (1959),'' and the condensed reference format used in this document is: ICRP Publication 1 (1959).

final rule that promulgated 10 CFR part 20, and the 1960 amendments to 10 CFR part 20 (25 FR 8595, September 7, 1960; and 25 FR 10914, November 17, 1960), reflect collaborative efforts between the ICRP and NCRP. Therefore, the dose calculation methodology for the AEC's radiation protection standards was based, in part, upon the compilation of the ICRP recommendations developed during the mid to late 1950s and contained in ICRP Publication 1, ''Recommendations of the International Commission on Radiological Protection,'' 1959; and ICRP Publication 2, ''Permissible dose for internal radiation,'' 1959.

Following the establishment of the NRC in 1975, the next and last revision of 10 CFR part 20 was published in the **Federal Register** on May 21, 1991 (56 FR 23360). The purpose of the 1991 revision was to adopt the basic tenets of the ICRP system of radiation dose limitation described in ICRP Publication 26 (1977), ''Recommendations of the ICRP.'' [4] The 1977 recommendations significantly modified previous radiation protection concepts and principles.

It established a new risk-based system of radiation protection based on three principles: Justification, optimization, and limitation. (1) Justification requires that no new practice or operation involving radiation should be allowed unless it produces a net benefit (i.e., no frivolous use of radiation). (2) Optimization requires all exposures to be kept as low as is reasonably achievable (ALARA) taking into account all relevant social and economic factors. (3) Limitation requires that the effective dose equivalent to individuals shall not exceed the limits (dose limits) as established for appropriate circumstances. The ICRP Publication 26 (1977) also provided for the summation of internal and external exposures for the first time, and eliminated the concept of a threshold effect or tolerance dose and introduced the concept of carcinogenesis as a stochastic effect (i.e., health effects that occur randomly). It provided the foundation and basis for all current Federal and State regulations, except the U.S. Department of Labor's, which is still based upon the ICRP recommendations of the 1950s. (Reference: ''A Review of the History of U.S. Radiation Protection Regulations, Recommendations, and Standards,'' by C.G. Jones, *Health Physics Journal,* February 2005, Vol. 88, No. 2, page 113, (ADAMS Accession No. ML050400427), and *Radiation Protection,* Chapter 4, page 4–3, by J.U. Burnham, et al, 1992)

The majority of the ICRP Publication 26 (1977) recommendations were adopted in NCRP Report No. 91 (1987), ''Recommendations on Limits for Exposure to Ionizing Radiation.'' The 1987 report replaced NCRP Report 39 (1971), ''Basic Radiation Protection Criteria,'' and NCRP Report No. 43 (1975), ''Review of the Current Status of Radiation Protection Philosophy.'' Therefore, the majority of the NCRP Report No. 91 (1987) recommendations were adopted in the 10 CFR part 20 amendments of 1991. The NCRP recommendations were issued after the publication of the proposed 10 CFR part 20 rule; as a result, some of its recommendations were not adopted in the final rule. For more information about ICRP Publication 26 (1977) and NCRP Report No. 91 (1987) recommendations incorporated into 10 CFR part 20 final rule, please see the statement of considerations for the 1986 proposed 10 CFR part 20 rule (51 FR 1092) and the 1991 final 10 CFR part 20 rule (56 FR 23391).

The 1991 revisions to 10 CFR part 20 were also supported by information in ICRP Publication 30 (1979–1988), ''Limits for Intakes of Radionuclides by Workers,'' [5] including its four parts, four supplements and index, which were published during the period of 1979 through 1988; and ICRP Publication 32 (1981), ''Limits for Inhalation of Radon Daughters by Workers.'' These documents were used to calculate the inhalation values for the annual limits on intake (ALIs) and derived air concentrations (DACs) for the radionuclides in 10 CFR part 20, appendix B. For more information about the application of these ICRP publications to the 10 CFR part 20 amendments, please see the statement of considerations for the 1986 proposed 10 CFR part 20 rule (51 FR 1092, 1121) and the 1991 final 10 CFR part 20 rule (56 FR 23391).

In ICRP Publication 45 (1985),[6] ICRP issued a statement recommending that the annual dose limit for members of the general public be reduced from 5 mSv (500 mrem) to 1 mSv (100 mrem); this annual dose limit which was adopted in the NRC's 1991 rulemaking.[7] In addition, when the 10 CFR part 20 rulemaking was near completion, the ICRP developed a new series of recommendations as ICRP Publication 60 (1991).[8]

The ICRP Publication 60 (1991) recommendations included lowering the occupational dose [9] limit from 50 mSv (5 rem) per year to a 5-year average of 20 mSv (2 rem) per year, with the dose in any given year not to exceed 50 mSv (5 rem); eliminating dose limits for individual organs, except for the skin and the lens of the eye; lowering the exposure limits to an embryo/fetus during the gestation period from 5 mSv (500 mrem) to 4.5 mSv (450 mrem); and changing radiation protection terminology and definitions. The ICRP Publication 60 (1991) recommendations were not considered in the NRC's 1991 rulemaking because they were issued after the rule's public comment period ended. Following the issuance of ICRP Publication 60 (1991), the ICRP issued a series of publications that revised internal dosimetry models. The revised internal dosimetry models superseded many, but not all, of the models described in ICRP Publication 30 (1979–1988) and earlier ICRP publications. As

[4] The recommended ICRP reference format is: ''ICRP, 1977. Recommendations of the ICRP. ICRP Publication 26. Ann. ICRP 1 (3),'' and the condensed reference format used in this document is: ICRP Publication 26 (1977).

[5] ICRP Publication 30 was published in four parts and several supplements. These publications are: ''ICRP, 1979. Limits for Intakes of Radionuclides by Workers. ICRP Publication 30 (Part 1). Ann. ICRP 2 (3–4);'' ''ICRP, 1979. Limits for Intakes of Radionuclides by Workers. ICRP Publication 30 (Supplement to Part 1). Ann. ICRP 3 (1–4);'' ''ICRP, 1980. Limits for Intakes of Radionuclides by Workers. ICRP Publication 30 (Part 2). Ann. ICRP 4 (3–4);'' ''ICRP, 1981. Limits for Intakes of Radionuclides by Workers. ICRP Publication 30 (Part 3). Ann. ICRP 6 (2–3);'' ''ICRP, 1982. Limits for Intakes of Radionuclides by Workers. ICRP Publication 30 (Supplement B to Part 3). Ann. ICRP 8 (1–3);'' ''ICRP, 1982. Limits for Intakes of Radionuclides by Workers. ICRP Publication 30 (Index). Ann. ICRP 8 (4);'' and ''ICRP, 1988. Limits for Intakes of Radionuclides by Workers: An Addendum. ICRP Publication 30 (Part 4). Ann. ICRP 19 (4).'' These publications are referenced collectively in the condensed reference formats as ICRP Publication 30 (1979–1988).

[6] The recommended ICRP reference format is: ICRP, 1985. Developing a Unified Index of Harm. ICRP Publication 45. Ann. ICRP 15 (3), and the condensed reference format used in this document is: ICRP Publication 45 (1985).

[7] International Commission on Radiological Protection, ''Statement from the 1985 Paris Meeting of the ICRP,'' *British Journal of Radiology,* Vol. 58, page 910:1985: also; Health Physics, 45(6), pages 828–829 (June 1985).

[8] The ICRP recommended format is: ICRP, 1991. 1990 Recommendations of the International Commission on Radiological Protection. ICRP Publication 60. Ann. ICRP 21 (1–3), and the condensed reference format used in this ANPR is: ICRP Publication 60 (1991).

[9] The NRC's regulations define ''occupational dose'' as ''the dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation or to radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee or other person. Occupational dose does not include doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released under § 35.75, from voluntary participation in medical research programs, or as a member of the public.'' 10 CFR 20.1003 (definition of ''occupational dose'').

a result, there are differences between 10 CFR part 20 and the dosimetry approaches and occupational dose limits reflected in ICRP Publications 60–61, 66–69, 71–72, and 74.[10]

Other than conforming changes to update cross-references to 10 CFR part 20 found in other NRC regulations, the 1991 rulemaking did not substantively revise other NRC regulations (e.g., 10 CFR parts 32, 50, 51, 61, and 72) that had explicit dose criteria. Consequently, some NRC regulations are still based on ICRP Publication 1 (1959), ICRP Publication 2 (1959), and NCRP reports of the 1950s. The differences between the 10 CFR part 20 requirements and the ICRP recommendations issued after ICRP Publication 30 (1979–1988) have created challenges for the NRC and its licensees.

The NRC staff described these challenges in its paper to the Commission, SECY–01–0148, ''Processes for Revision of 10 CFR Part 20 regarding Adoption of ICRP Recommendations on Occupational Dose Limits and Dosimetric Models and Parameters,'' dated August 2, 2001 (ADAMS Accession No. ML011580363). Specifically, the challenges included licensee requests to use dosimetry methods based upon the recommendations in the various ICRP publications issued after ICRP Publication 30 (1979–1988) for both external (to the body) and internal (within the body) dose assessments; licensees exceeding, or potentially exceeding, dose limits, although the NRC staff had determined that in some cases the 10 CFR part 20 methods for assessing internal and external dose were overly conservative relative to the most current ICRP recommendations; the general areas of differences between radiation protection requirements of the NRC and those nations that relied upon the later ICRP recommendations, including the differences in occupational exposure limits; and the use by some Federal agencies (e.g., U.S. Department of Energy (DOE) and the U.S. Environmental Protection Agency (EPA)) of dosimetry models based upon ICRP recommendations that were either not incorporated in the 1991 rulemaking or were published after that rulemaking.

The SECY–01–0148 paper also discussed options for amending 10 CFR part 20 by adopting the ICRP's recommended occupational dose limits, dosimetric models, and related parameters, and the advantages and disadvantages of the NRC's adoption of the recommendations in ICRP Publication 60 (1991) and the dosimetry models in ICRP Publications 66–69, 71–72, and 74. The paper concluded with an NRC staff recommendation not to amend 10 CFR part 20 at that time, but rather to initiate an effort to study the impacts of adopting the recommended ICRP dosimetry models by through outreach with stakeholders; working with other Federal agencies through the Interagency Steering Committee on Radiation Standards (ISCORS) to ensure a coherent approach within the United States in radiation protection standards and dosimetric models; developing a technical information basis to provide a better understanding of analytical impacts of possible alternative changes to 10 CFR part 20; and monitoring the work of the ICRP as it develops its revision to implement the ICRP Publication 60 (1991) recommendations.

In the staff requirements memorandum (SRM) to SECY–01–0148, dated April 12, 2002, (ADAMS Accession No. ML021050104), the Commission approved the NRC staff's recommendations to continue to work with and monitor the efforts of other Federal agencies to ensure a coherent approach to U.S. radiation protection standards and dosimetric models and to continue to monitor work of the ICRP. The Commission disapproved the development of a communication plan and a technical information basis. The Commission also directed the NRC staff to continue to consider and grant, as appropriate, licensee requests to use the ICRP Publication 60 (1991) revised internal dosimetry models on a case-by-case basis. As a result, the current NRC regulatory framework is a mixture of radiological standards, concepts and quantities, ranging from the 1959 recommendations in ICRP Publication 1 (1959) to the modeling and numeric values of the 1990 recommendations in ICRP Publication 60 (1991).[11]

With the issuance of ICRP Publication 103 (2007),[12] the NRC was again presented with the question of whether to update its regulations to reflect the ICRP's recommendations in the area of radiation protection science. This question was addressed in SECY–08–0197, ''Options to Revise Radiation Protection Regulations and Guidance with Respect to the 2007 Recommendations of the ICRP,'' dated December 18, 2008 (ADAMS Accession No. ML091310193). This paper described and evaluated the ICRP Publication 103 (2007) recommendations along with an NRC staff's recommendation that the Commission approve a closer alignment of the NRC's regulatory framework with the ICRP Publication 103 (2007) recommendations. The NRC staff's recommendation set forth some steps to achieve this alignment, including the development of a technical basis, or the rationale, for a proposed rulemaking to amend the NRC's radiation protection regulations and outreach with stakeholders and interested parties to identify issues, options, and impact information. The NRC staff stated that it would provide the Commission with the results of the stakeholder and interested party interactions, the scope of the proposed rulemaking, including policy and implementation issues, the resources needed for the rulemaking, and the projected rulemaking completion date, which would be dependent on the ICRP's development of essential technical information.

The SECY–08–0197 paper noted that the ICRP Publication 103 (2007) recommendations provided new values for the tissue weighting factors.[13] The paper also noted that ICRP estimated the following dates and deliverables for updated scientific information and

[10] ICRP Publication 61 (1991), ''Annual Limits on Intake of Radionuclides by Workers Based on the 1990 Recommendations;'' ICRP Publication 66 (1994), ''Human Respiratory Tract Model for Radiological Protection;'' ICRP Publication 67(1993), ''Age-dependent Doses to Members of the Public from Intake of Radionuclides—Part 2 Ingestion Dose Coefficients;'' ICRP Publication 68 (1994), ''Dose Coefficients for Intakes of Radionuclides by Workers;'' ICRP Publication 69 (1995), ''Age-dependent Doses to Members of the Public from Intake of Radionuclides—Part 3 Ingestion Dose Coefficients;'' ICRP Publication 71 (1995), ''Age-dependent Doses to Members of the Public from Intake of Radionuclides—Part 4 Inhalation Dose Coefficients;'' ICRP Publication 72 (1995), ''Age-dependent Doses to the Members of the Public from Intake of Radionuclides—Part 5 Compilation of Ingestion and Inhalation Coefficients;'' and ICRP Publication 74 (1996), ''Conversion Coefficients for use in Radiological Protection against External Radiation.''

[11] The NRC's current 10 CFR part 20 regulations do not expressly incorporate the recommendations of ICRP Publication 60 (1991) but are based upon the recommendations of ICRP Publications 26 and 30. The NRC's licensees must request use of the ICRP Publication 60 (1991) internal dosimetry models. If approved by the NRC, such a request is treated as an exemption from 10 CFR part 20 regulations. The NRC's authority to grant exemptions is in 10 CFR 20.2301. As a matter of practice, in such exemption approvals, the NRC only authorizes the use of the dosimetric concepts and quantities in the ICRP Publication 60 (1991) recommendations.

[12] The recommended ICRP reference format is ''ICRP, 2007. The 2007 Recommendations of the International Commission on Radiological Protection. ICRP Publication 103. Ann. ICRP 37 (2–4), 2007.'' The condensed ICRP reference format used throughout this document is: ''ICRP Publication 103 (2007).''

[13] *Weighting factor* W_T, for an organ or tissue (T) is the proportion of the risk of stochastic effects (i.e., health effects that occur randomly) resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly (10 CFR 20.1003, definition of ''Weighting factor W_T'').

guidance for its new dosimetry system: a. A dose conversion factors for calculating occupational exposure from the most commonly used radioisotopes by 2011, b. dose conversion factors for calculating dose limits for members of the public by 2012, and c. dose conversion factors for calculating exposure for all radionuclides by 2014. At present, this information is still being developed. The ICRP's development of biokinetic and dosimetric models and dose coefficients for both worker and public exposure to radionuclides based on the ICRP recommendations was projected for completion by 2014. It is anticipated that this information will not be available until after 2015.

As pointed out in SECY–08–0197, the revised dose conversion factors are crucial to any amendment of the NRC's radiation protection framework. These factors could provide the basis for revising the numeric values of weighting factors, ALIs, and DACs contained in the following 10 CFR part 20 requirements: 10 CFR part 20, appendix B, Table 1, ''Occupational Values;'' 10 CFR part 20, appendix B, Table 2, ''Effluent Concentrations;'' and 10 CFR part 20, appendix B, Table 3, ''Releases to Sewers.''

In the SRM to SECY–08–0197, ''Options to Revise Radiation Protection Regulations and Guidance with Respect to the 2007 Recommendations of the International Commission on Radiological Protection,'' dated April 2, 2009 (ADAMS Accession No. ML090920103), the Commission approved the NRC staff's recommended option to begin engagement with stakeholders and interested parties to initiate development of the technical basis for possible revision of the NRC's radiation protection regulations, as appropriate and where scientifically justified, to achieve greater alignment with the ICRP Publication 103 (2007) recommendations. The Commission also directed the NRC staff to continue to participate in national and international forums on radiation protection and to keep them informed of the results of these outreach activities. Notably, the Commission agreed with both the NRC staff and the NRC's Advisory Committee on Reactor Safeguards (ACRS) that ''the current NRC regulatory framework continues to provide adequate protection of the health and safety of workers, the public, and the environment.'' [14] In this regard, the Commission stated that from ''a safety regulation perspective, ICRP Publication 103 (2007) proposes measures that go beyond what is needed to provide for adequate protection.'' [15] During the outreach activities associated with the potential alignment with the ICRP Publication 103 (2007) recommendations, the Commission directed the NRC staff to ''focus the discussion on discerning the benefits and burdens associated with revising the radiation protection regulatory framework.'' [16]

The Commission also directed the NRC staff to examine how a lower occupational dose limit of 20 mSv (2 rem) per year has affected the medical and industrial sectors in countries that have implemented the ICRP recommendation when developing the technical basis for the rulemaking. Finally, based on the extent and complexity of the stakeholder comments received, the Commission directed the NRC staff to either (1) provide the Commission with a proposed rule once the technical basis has been developed, or (2) provide a paper to the Commission outlining any substantive policy issues and options for their resolution prior to developing a proposed rule.

In response to the Commission's direction in SRM–SECY–08–0197, NRC staff conducted stakeholder outreach activities on issues about potential changes to the NRC's radiation protection regulations. Three **Federal Register** notices were issued requesting public feedback and comments (74 FR 32198, July 7, 2009; 75 FR 59160, September 27, 2010; and 76 FR 53847, August 30, 2011). Presentations and discussions were made at a variety of professional societies, licensee organizations, public interest groups, and State organizations (e.g., Conference of Radiation Control Program Directors and the Organization of Agreement States).

In the fall of 2010, the NRC staff conducted a series of facilitated round table workshops in Washington, DC, Los Angeles, CA, and Houston, TX. Each workshop included representatives from a broad range of users of radioactive material; this process provided an opportunity for various groups of stakeholders to have a focused discussion of the technical issues associated with potential changes to the NRC's radiation protection standards. The October 2010 workshop in Washington, DC focused on the nuclear power and fuel cycle industries and the radiation protection programs of other Federal agencies (e.g., EPA, DOE, U.S. Navy, Armed Forces Radiobiology Research Institute, and National Institutes of Health). The November 2010 Los Angeles workshop focused on medical uses of radiation, and the November 2010 Houston, TX workshop focused on industrial radiography. These workshops provided stakeholders the opportunity to discuss the various technical issues with each other and with NRC staff. Transcripts of each workshop and written comments received in response to the **Federal Register** notices are publicly available through the NRC's public Web site on the page entitled, ''Options to Revise Radiation Protection Regulations and Guidance,'' *http://www.nrc.gov/about-nrc/regulatory/rulemaking/potential-rulemaking/opt-revise.html.*

In addition, the NRC staff's outreach activities included participation in the revision of the International Basic Safety Standards by the International Atomic Energy Agency (IAEA) from 2009 through its completion in the second quarter of 2013, and observation of the revision of the Euratom Basic Safety Standards Directive in the European Union. Both the IAEA's and Euratom's revisions focused on aligning their requirements with the ICRP Publication 103 (2007) recommendations.

After extensive stakeholder engagement, the NRC staff determined that an additional paper to the Commission outlining substantive policy issues was needed. This additional policy paper was provided as SECY–12–0064, ''Recommendations for Policy and Technical Direction to Revise Radiation Protection Regulations and Guidance,'' dated April 25, 2012 (ADAMS Accession No. ML121020108). The SECY–12–0064 paper summarized the NRC staff's interactions with stakeholders as directed by SRM–SECY–08–0197, and provided policy and technical guidance on potential revisions to the NRC's radiation protection regulations.

In SECY–12–0064, the NRC staff recommended that the NRC's regulatory framework be amended to reflect the new terminology and dose calculation methodologies to align with national and international scientific approaches for estimating radiation exposure and risk contained in ICRP Publication 103 (2007). The NRC staff, however, recommended that the NRC not initiate a rulemaking to reflect these changes until the ICRP published its updated dose coefficients and other supporting information, so that a single comprehensive change could be made to the relevant provisions and appendices

[14] SRM–SECY–08–0197, ''Options to Revise Radiation Protection Regulations and Guidance with Respect to the 2007 Recommendations of the International Commission on Radiological Protection,'' dated April 2, 2009 (ADAMS Accession No. ML090920103), at 1.

[15] *Id.*

[16] *Id.*

of 10 CFR part 20. The NRC staff also recommended that the following be explored in greater detail: a reduction in the occupational dose limit to 20 mSv (2 rem) per year, including the mechanisms that would be available to provide some flexibility for licensees to request a higher limit under specified conditions; the impacts of a reduction in the dose limit for the lens of the eye to either 50 mSv (5 rem) or 20 mSv (2 rem), including how the prevention of cataracts should be viewed in comparison with the potential formation of cancer or other adverse impacts; and the impacts of a change in the dose limit for the embryo/fetus to 1 mSv (100 mrem).

Finally, in SECY–12–0064, the NRC staff recommended that: No additional ALARA (as low as is reasonably achievable) planning requirements should be made, however applicable regulatory guidance should be updated to provide additional examples of mechanisms acceptable in the development and implementation of radiation protection programs; the NRC staff should continue to monitor and interact with various international organizations in developing tools and methodologies for assessment of doses in the environment; the NRC staff should explore the implications, benefits, and costs of aligning NRC regulations in 10 CFR part 20 to the NRC metrication policy; and the NRC staff should explore a more detailed examination of the implications, benefits, and costs of requiring additional NRC license categories and Agreement State [17] licensees to report occupational exposures to the NRC's Radiation Exposure Information and Reporting System (REIRS) database.

In SRM–SECY–12–0064, ''Recommendations for Policy and Technical Direction to Revise Radiation Protection Regulations and Guidance,'' dated December 17, 2012 (ADAMS Accession No. ML12352A133), the Commission approved in part and disapproved in part the NRC staff's recommendations. Specifically, the Commission approved the NRC staff's development of a draft regulatory basis for a revision to 10 CFR part 20 to align with the most recent methodology and terminology for dose assessment in ICRP Publication 103 (2007), including consideration of any conforming changes to all NRC regulations. The Commission directed the NRC staff to develop improvements in the NRC's guidance for those segments of the regulated community that would benefit from more effective implementation of the ALARA strategies and programs to comply with regulatory requirements. The Commission also directed the NRC staff to continue discussions with stakeholders regarding dose limits for the lens of the eye and the embryo/fetus. In addition, the Commission directed the NRC staff to continue discussions with stakeholders on alternative approaches to deal with individual protection at or near the current dose limit. Finally, the Commission directed the NRC staff to improve reporting of occupational exposure by the NRC and Agreement State licensees to the NRC's REIRS database.

In SRM–SECY–12–0064, the Commission disapproved the NRC staff's recommendations to develop a draft regulatory basis to reduce the occupational total effective dose equivalent to 20 mSv (2 rem) per year. The Commission also disapproved the elimination of traditional or ''English'' dose units to measure radiation exposure from the NRC's regulations. Rather, the Commission directed the continuation of the use of both traditional and International System (SI) [18] units in the NRC's regulations.

In a separate and related activity, the NRC staff will be preparing an ANPR for 10 CFR part 50, appendix I (RIN 3150–AJ38; NRC–2014–0044), which concerns the NRC's design objectives governing dose assessments for radioactive effluents from light-water-cooled nuclear power reactors. The preparation of the 10 CFR part 50, appendix I, ANPR is also in response to the Commission's direction in SRM–SECY–12–0064, which stated that the NRC staff shall, along with the development of the draft regulatory basis for the 10 CFR part 20 regulations, engage in a parallel effort to develop a draft regulatory basis for aligning the 10 CFR part 50, appendix I, design objectives with the most recent methodology and terminology for dose assessment.[19]

III. Regulatory Objectives

In accordance with the Commission's direction provided in SRM–SECY–12–0064, the NRC staff is preparing a draft regulatory basis to support a possible amendment to 10 CFR part 20, and with conforming changes to other NRC regulations to align more closely with the ICRP Publication 103 (2007) dose assessment methodology and terminology. The NRC staff is continuing to hold discussions with stakeholders regarding alternative approaches to ensure individual protection at or near the current dose limit are examined, including considerations of whether revised or additional regulatory requirements and guidance may be appropriate to ensure that cumulative occupational exposures [20] are minimized, and whether progressive restrictions should be taken as cumulative exposures increase; whether the dose limits for the lens of the eye should be reduced; whether the dose limits to the embryo/fetus of a declared pregnant occupational worker should be reduced; and whether any undue hardships arise as a result of applying the NRC's metrication policy to any amendment of the 10 CFR part 20 regulations. The results of these discussions with stakeholders will be reflected in the draft regulatory basis. Finally, the 10 CFR part 20 draft regulatory basis will consider improvements in the reporting of occupational exposure by the NRC and Agreement State licensees, including those licensees who currently do not currently submit reports to the NRC's REIRS database.

IV. Specific Considerations

The NRC staff has identified policy and technical issues to guide the development of a draft regulatory basis for the potential revisions to the NRC's radiation protection regulations and guidance as described in Section III of this ANPR. Sections A through F that follow provide a summary of these policy and technical issues. A more detailed discussion of each issue is

[17] Section 274 of the Atomic Energy Act of 1954, as amended (AEA), authorizes the NRC to relinquish specified authority concerning the regulation of certain radioactive materials to a State, which then assumes regulatory authority over those radioactive materials following the signing of a written agreement between the NRC and the State. Becoming an Agreement State is at the discretion of the State; at present 37 states have Agreement State status. Prior to such relinquishment, the NRC must determine whether the proposed State regulatory program is adequate to protect public health and safety and is compatible with NRC's regulations before it can become an Agreement State. Once Agreement State status is established, the NRC will monitor the Agreement State program. Amendments to NRC regulations may require corresponding changes to the regulations of the various Agreement States. The NRC's Agreement State regulations are in 10 CFR part 150. The definitions section of 10 CFR part 150, 10 CFR 150.3, defines the term ''Agreement State'' as ''any State with which the [NRC] or the Atomic Energy Commission has entered into an effective agreement under subsection 274b of the [AEA].''

[18] ''SI'' is the French acronym for ''*Le Système international d'unités*'' the modern form of the metric system.

[19] The NRC staff has not yet determined whether it will prepare one draft regulatory basis, covering both potential revisions to the 10 CFR part 20 regulations and the 10 CFR part 50, appendix I, design objectives, or two separate bases.

[20] The total dose that an occupationally exposed worker receives as a result of repeated exposures to ionizing radiation to the same portion of the body, or to the whole body, over time (*http://www.nrc.gov/reading-rm/basic-ref/glossary/cumulative-dose.html*).

contained in a series of six issue papers prepared by NRC staff and identified in Section VIII of this ANPR.

A. Update 10 CFR Part 20 To Align With ICRP Publication 103 Methodology and Terminology

Several revisions are under consideration to more closely align the existing NRC regulations in 10 CFR part 20 with the ICRP Publication 103 (2007) methodology and terminology for dose assessment. During the 30-year period of 1977 to 2007, the ICRP published three key radiological protection recommendations, ICRP Publication 26 (1977), ICRP Publication 60 (1991), and ICRP Publication 103 (2007). The current NRC regulatory framework is a mixture of radiological standards, concepts and quantities ranging from the recommendations in ICRP Publication 1 (1959) to the modeling and numeric values of the recommendations in ICRP Publication 60 (1991).

The current 10 CFR part 20 regulations are based primarily upon the recommendations of ICRP Publication 26 (1977); however, there is one difference in terminology worth noting. The ICRP recommendations used the phrases ''the sum of the dose-equivalent from external exposure'' and ''the committed effective dose equivalent from the intake of radionuclides.'' The NRC's regulations use the term ''total effective dose equivalent'' (TEDE) to represent the summation of dose received from sources external to the body and dose received from the intake of radioactive materials.

In 1991, the ICRP revised its recommendations for dose calculation. The ICRP Publication 60 (1991) recommendations provided changes in the way tissue and radiation weighting factors were defined and used (moving from quality factors to radiation weighting factors). A corresponding change in terminology was also made. For example, ICRP Publication 60 (1991) introduced the term ''effective dose,'' which was defined as the sum of the weighted equivalent doses in all the tissues and organs of the body.

Additionally, the ICRP Publication 103 (2007) recommendations made revisions to the calculation of dose, including (1) modification of the modeling used for calculation of radiation exposures, (2) changes in values of tissue weighting factors and radiation weighting factors, and (3) substantial modifications of the metabolic models used to represent the movement of radioactive material through the human body. The human body can now be modeled as a more complex set of mathematical and ''voxel'' [21] phantoms as a result of advances in medical imaging technology since the last substantial amendment of the 10 CFR part 20 regulations in 1991. These technological advances have resulted in the development of reference computational phantoms that are specific models for adult males and females, 15-year-old males and females, and for various other age groups, including infants, 1-year-old, 5-year-old, and 10-year-old children. The reference phantoms for the human body are described in general terms in ICRP Publication 103 (2007) and in ICRP Publication 110 (2009).[22]

The availability of models for different age groups provides the opportunity to calculate the numeric values for public exposure to effluents in a more comprehensive manner as compared to the previous calculation methodology of basing assessments primarily on an adult member of the public. A general population includes individuals of both genders and various age groups that range from newborns to senior citizens. Over time, an individual matures from infancy to adulthood, which includes various stages of development. Therefore, the scientific community is evaluating the appropriate approach for a member of the public that would account for the period of time spent at different ages so that the long-term risk of exposure to radiological effluents over a number of years can be properly represented. In particular, the ICRP is considering the use of an age and gender weighted dose coefficient for developing a set of values for environmental intake of radionuclides. Similarly, the NRC is also considering revising the definition of the reference person [23] for its use in environmental dose calculations. The NRC is considering the use of the age and gender averaged approach to provide a more realistic representation of a member of the public that explicitly considers the presence of infants and children within the population.

The concept of a reference person may be like the approach documented in the DOE Technical Standard, DOE–STD–1196–2011, ''Derived Concentration Technical Standard,'' dated April 2011 (ADAMS Accession No. ML13323B598). The DOE–STD–1196–2011 calculates derived concentration standards using age-specific effective dose coefficients for reference members of the public, along with age and gender dependent intake rates for ingestion of water and inhalation of air. The members of the public are represented by six age subgroups (newborns,[24] 1-year-old, 5-year-old, 10-year-old, and 15-year-old children and adults). The analysis weights the effective dose coefficients for each subgroup by their fractional representation in the U.S. population and by their intake of the radionuclide through inhalation, ingestion, or air submersion over their lifetimes. The DOE standard is based on the weighting factors and dose coefficients in ICRP Publication 60 (1991).

As part of its development of the draft regulatory basis, the NRC staff will consider revising the regulations in 10 CFR part 20, as well as making conforming changes to other NRC regulations, to incorporate the ICRP term, ''effective dose.'' The NRC staff recognizes the preference, from a regulatory stability standpoint, for retaining the term ''total effective dose equivalent,'' but will analyze, in the draft regulatory basis, the advantages and disadvantages of replacing ''total effective dose equivalent'' with ''effective dose'' or ''total effective dose'' in its regulations.

The same terminology as it is used elsewhere in the world may present qualitative benefits of consistency and ease in communication. With regard to the ICRP's dose assessment methodology recommendations, the NRC staff will consider, in the draft regulatory basis, replacing the definition of ''weighting factor'' (W_T) in 10 CFR 20.1003 with the tissue weighting factors in Table 3, ICRP Publication 103 (2007), and replacing the quality factors in 10 CFR 20.1004, Tables (B).1 and (B).2, ''Units of Radiation Dose,'' with the radiation weighting factors in Table 2, ICRP Publication 103 (2007), along with other associated changes (e.g., replacing ''dose equivalent'' with the

[21] Voxel is the shortened term for *volume pixel,* the smallest distinguishable box-shaped part of a three-dimensional image. Voxel images are primarily used in the field of medicine and are developed from x-rays, CAT (Computed Axial Tomography) scans, and MRIs (Magnetic Resonance Imaging) allowing medical professionals to obtain accurate 3D models of the human body. (Reference: Webopedia (*www.webopedia.com*)).

[22] The ICRP recommended format is: ICRP, 2009. Adult Reference Computational Phantoms. ICRP Publication 110. Ann. ICRP 39 (2), and the condensed format used in this document is: ICRP Publication 110 (2009).

[23] The NRC's regulations use the term ''reference man,'' which means a hypothetical aggregation of human physical and physiological characteristics arrived at by international consensus. These characteristics may be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base (10 CFR 20.1003, definition of ''reference man'').

[24] The DOE standard uses the term ''newborn,'' while ICRP Publication 103 (2007) uses the term ''infant.''

term ''equivalent dose,'' and replacing ''effective dose equivalent'' with the term ''effective dose,'' and revising the definition of the term ''quality factor''). If approved by the Commission, an update of 10 CFR part 20 to reflect the tissue weighting factors and radiation weighting factors from ICRP Publication 103 (2007) would amend these sections.

In addition, as a part of the development of the draft regulatory basis, NRC staff will consider revising the values in appendix B to 10 CFR part 20, ''Annual Limits on Intake (ALIs) and Derived Air Concentrations (DACs) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sewerage;'' Table 1, ''Occupational Values;'' Table 2, ''Effluent Concentrations;'' and Table 3, ''Releases to Sewers,'' with new values for ALIs, DACs, effluent concentrations, and sewer concentrations. The current values in appendix B are based on a public dose limit of 0.5 mSv (50 mrem).

The various types of NRC licenses pose different challenges for the use of methodology and terminology for dose assessment. In some instances, exposures to occupational workers and members of the public at a licensed facility are only from sources external to the body. Conversely, other types of licensed facilities have the potential for significant exposures to occupational workers and members of the public due to intake of radionuclides. These types of licenses would be more directly impacted by the revision of the W_T, ALI, and DAC values. Therefore, the NRC staff is seeking to understand how various proposals for addressing this issue would affect licensee activities. Likewise, the NRC staff wishes to understand the possible impacts of the proposals, and more specifically, the reasons why certain proposals may be difficult to achieve or may undermine radiation protection. Therefore, the NRC staff is seeking to understand the impacts of adopting the ICRP Publication 103 (2007) methodology and terminology into its regulatory program.

The Issue Paper 1, ''Update 10 CFR Part 20 to Align with International Commission on Radiological Protection Publication 103 Methodology and Terminology,'' ICRP Publication 103, provides a more detailed discussion and is available in ADAMS under Accession No. ML14084A342. In addition, the following questions are intended to elicit information from the public, the regulated community, and other stakeholders.

Questions

Q1–1: What are the implications of changing the NRC's regulations to specify ''total effective dose'' in place of the current term ''total effective dose equivalent?'' To the extent possible, please provide specific implementation and operational cost information on the impacts of this change relative to licensee procedures, training, recordkeeping, and reporting. This information is necessary for the NRC to determine whether the imposition of such requirements on NRC licensees is justified.

Q1–2: If the NRC adopts the dose assessment terminology and methodology of ICRP Publication 103 (2007) in a future rulemaking, what time period should the NRC consider providing for implementation of the ICRP Publication 103 (2007) methodology and terminology?

Q1–3: How should the calculations of effluent concentration, currently in the 10 CFR part 20 radiation protection regulations, be modified to reflect advances in modeling that are now available? In particular, the NRC is interested in preliminary views on the age and gender averaged approach.

Q1–4: Should the public dose limit of 0.5 mSv (50 mrem) continue to be the basis for the effluent concentration limits for the radionuclides in 10 CFR part 20, appendix B, Table 2, Columns 1 and 2? Should it be reduced or otherwise modified?

B. Occupational Dose Limit for the Lens of the Eye

The ICRP Publication 26 (1977) provided an occupational dose limit of 300 mSv (30 rem) per year for the lens of the eye. During the 1980's, it became clear from epidemiological studies that the risks from radiation exposure were higher than those anticipated when the ICRP Publication 26 (1977) recommendations were published. As a result, in ICRP Publication 60 (1991), the ICRP recommended reducing the occupational dose limit for the lens of the eye to 150 mSv (15 rem) per year, which is 50 percent of the previously recommended limit of 300 mSv (30 rem) per year in ICRP Publication 26 (1977). In its 1991 rulemaking for 10 CFR part 20, the NRC adopted the ICRP Publication 60 (1991) recommendation in 10 CFR 20.1201(a)(2)(i). In addition, the 1991 amendments added a definition of ''lens dose equivalent'' (LDE), which is the external exposure of the lens of the eye at a tissue depth of 0.3 cm (300 mg/cm^2).[25]

[25] 10 CFR 20.1003, definition of ''Lens dose equivalent (LDE).''

As the ICRP continued to re-examine its radiation protection principles, it noted that the eye is one of the most sensitive organs of the body, that the protection of the eye against the effects of ionizing radiation is designed primarily to prevent the formation of cataracts, and that the most sensitive part of the eye for cataract formation is the lens. Cataract formation falls under the class of radiation effects referred to as deterministic (or tissue reactions as used in ICRP Publication 103 (2007)). At doses above a certain threshold, the severity of cataract formation increases with dose, but the radiation-induced incidence of cataract formation below the threshold dose is believed to be essentially zero.

On April 21, 2011, the ICRP issued a statement on tissue reactions indicating that a review of recent epidemiological evidence suggests that there are some tissue reaction effects, particularly those with very late manifestation, where threshold doses are, or might be, lower than previously considered. For the lens of the eye, the threshold absorbed dose is now considered to be 0.50 Gy (50 rad). The ICRP's statement was based on draft report, ''Early and Late Effects of Radiation in Normal Tissues and Organs: Threshold Doses for Tissue Reactions and Other Non-Cancer Effects of Radiation in a Radiation Protection Context,'' which was published on January 20, 2011, by ICRP. The draft report contained information reviewing the early and late effects of radiation in 36 normal tissues and organs with respect to radiation protection. It also provided new estimates of threshold doses for tissue injury in all organ systems, and for morbidity and mortality, following acute, fractionated, or chronic exposure.

On, August 30, 2011, the NRC solicited public comments on the proposed new ICRP recommendations with the publication, ''New International Commission on Radiological Protection Recommendations on the Annual Dose Limit to the Lens of the Eye,'' in the **Federal Register** (76 FR 53847). A summary of stakeholder views on this issue is provided in SECY–12–0064, Enclosure 3, ''Assessment of Technical Issues and Feedback,'' pages 13 through 17 (ADAMS Accession No. ML121020108).

The ICRP revised the January 2011 draft report based on the comments received during the comment period. Its findings were included in ICRP Publication 118 (2012), ''ICRP Statement on Tissue Reactions and Early and Late Effects of Radiation in Normal Tissues and Organs—Threshold Doses for

Tissue Reactions in a Radiation Protection Context,'' published on August 28, 2012. The ICRP Publication 118 (2012) formalized the new ICRP recommendations for the lens of the eye that are based on the prevention of radiogenic cataracts. For planned occupational exposure situations, the ICRP recommended reducing the limit on equivalent dose for the lens of the eye to 20 mSv (2 rem) per year, averaged over 5 consecutive years (i.e., 100 mSv (10 rem) in 5 years), with no single year exceeding 50 mSv (5 rem), which is significantly lower than ICRP's previous recommendation of 150 mSv (15 rem) per year in ICRP Publication 60 (1991).

The NRC believes that it is appropriate, and scientifically justified, to explore in greater detail the impact of a reduction in the dose limit for the lens of the eye to 50 mSv (5 rem). The NRC also believes that further discussion is warranted on how the prevention of cataracts (which can be corrected by a well-established surgical procedure) compares to efforts to reduce the probability of cancer, a disease posing a far greater health risk. The approaches to be considered include adopting the recommendations in ICRP Publication 118 (2012), moving towards closer alignment with the ICRP recommendations, or retaining the current dose limit. Any new requirements will have implications for measuring occupational exposures and the need to better estimate the dose to the lens of the eye.

The Issue Paper 2, ''Occupational Dose Limit for the Lens of the Eye,'' provides a more detailed discussion and is available in ADAMS under Accession No. ML14084A341. In addition, the following questions are intended to elicit information from the public, the regulated community, and other stakeholders to obtain this information.

Questions

Q2–1: Is closer alignment with or adoption of the ICRP Publication 118 (2012) recommendations regarding the dose limits to the lens of the eye appropriate given the scientific information now available?

Q2–2: How should the impact of a radiation-induced cataract be viewed in comparison with other potential radiation effects?

Q2–3: What mechanisms could be applied to keep the cumulative exposure to the lens of the eye below the threshold of 0.50 Gy (50 rad)?

Q2–4: What methods should be allowed for measurement or assessment of the dose to the lens of the eye?

Q2–5: What methods should be allowed for recording dose to the lens of the eye when the eyes are protected?

Q2–6: What are the potential operational impacts of lowering the annual occupational dose to the lens of the eye from the current NRC regulatory standard of 150 mSv (15 rem) to 50 mSv (5 rem)? Would a reduction in the occupational dose limit for the lens of the eye require changes in programs, procedures, practices (e.g., increased use of protective eyewear), or in-room shielding? If so, please describe these changes, including any potential implementation and operational costs.

Q2–7: What are the potential impacts on State regulatory programs of a reduction in the occupational dose limit to the lens of the eye from the current NRC regulatory standard of 150 mSv (15 rem) to 50 mSv (5 rem)?

C. Dose Limit for Embryo/Fetus of a Declared Pregnant Occupational Worker

Currently, the NRC's regulations in 10 CFR 20.1208(a) set the dose limit for the embryo/fetus of a declared pregnant worker at 5 mSv (500 mrem) for the entire pregnancy. Section 20.1208(d) provides allowances for delays in the declaration of pregnancy by workers. If the dose equivalent to the embryo/fetus has exceeded 5 mSv (500 mrem), or is within 0.5 mSv (50 mrem) of this dose, at the time the worker declares the pregnancy to the licensee, then the dose to the embryo/fetus cannot exceed 0.5 mSv (50 mrem) for the remainder of the pregnancy (10 CFR 20.1208(d)). In addition, licensees are to make efforts to avoid substantial variation above a uniform monthly exposure rate to satisfy the dose limit (10 CFR 20.1208(b)). These requirements are based on the ICRP Publication 26 (1977) recommendations. However, ICRP Publication 103 (2007) recommends that the dose limit for the embryo/fetus of a declared pregnant worker be the same as that for a member of the public, which is 1 mSv (100 mrem).

Prior to the 1991 amendments to 10 CFR part 20, the NRC's regulations did not contain a specific dose limit for the embryo/fetus of a declared pregnant occupational worker. Instead, as a matter of policy, the NRC used a single annual limit for both genders and relied on information in Regulatory Guide 8.13, ''Instruction Concerning Prenatal Radiation Exposure,'' which was first issued in March 1975 (ADAMS under Accession No. ML13350A220) to maintain exposures to the embryo/fetus ALARA.

In developing Regulatory Guide 8.13, the Commission considered the recommendations in NCRP Report No. 39 (1971), ''Radiation Protection Criteria.'' The NCRP recommended that during the entire gestation period, the maximum permissible dose equivalent to the embryo/fetus from occupational exposure of the worker should not exceed 5 mSv (500 mrem). The ICRP Publication 26 (1977) recommended limiting the working conditions of the declared pregnant worker in such a manner that it is unlikely that the embryo/fetus would receive a dose greater than 5 mSv (500 mrem) for the entire gestation period (51 FR 1092; January 9, 1986).

Thousands of pregnant women are occupationally exposed to ionizing radiation each year. There are radiation-related risks throughout pregnancy that are related to the stage of pregnancy and absorbed dose. Exposure of the embryo/fetus to ionizing radiation could cause adverse health effects, such as cancer and developmental abnormalities. The susceptibility of the embryo/fetus to damage by radiation is well established and data suggests that the period from 10 weeks to 17 weeks in the development of a fetus may be especially critical. Because of this susceptibility, limiting the dose to the embryo/fetus to 5 mSv (500 mrem) or less during the entire pregnancy is generally considered desirable (51 FR 1092; January 9, 1986). Accordingly, the NCRP Report 54 (1977), ''Medical Radiation Exposure of Pregnant and Potentially Pregnant Women,'' recommended that the total dose equivalent to the embryo/fetus from occupational exposure of the expectant mother not exceed 5 mSv (500 mrem), and that once the pregnancy is known, exposure of the embryo/fetus not exceed 0.5 mSv (50 mrem) in any month.

The ICRP Publication 60 (1991) made clear that the embryo/fetus should be regarded as a member of the public when considering the protection of female workers who are or may be pregnant. In ICRP Publications 60 (1991) and 103 (2007), the ICRP concluded that there is no reason to distinguish between the genders for the purposes of controlling occupational exposures. However, under the ICRP recommendations, if a female worker declares her pregnancy, then additional controls must be considered to protect the embryo/fetus. The ICRP also stated that the methods of radiation protection for occupational workers, who are or may be pregnant, should provide a level of protection for the embryo/fetus equivalent to that provided for a member of the public. The ICRP Publication 103 (2007) recommended approach is that the working conditions of a pregnant worker, after declaration

of pregnancy, should be such that it is unlikely that the additional dose to the fetus would exceed about 1 mSv (100 mrem) during the remainder of pregnancy.

On May 24, 2013, NCRP Report No. 174, ''Preconception and Prenatal Radiation Exposure: Health Effects and Protective Guidance,'' was released. It updated and expanded upon the information in NCRP Report No. 54. The report noted that scientific knowledge has increased and public concerns have changed in the past 36 years since NCRP Report No. 54 was published. Like the findings of ICRP Publication 103 (2007), the report recommended a dose limit of 1 mSv (100 mrem), including dose from the intake of radionuclides, to the embryo/fetus of a declared pregnant worker and recommended applying the concept of ALARA to these exposures.

Although the assessment of doses to the embryo/fetus from exposures to external radiation can be related directly to exposures of the pregnant worker, assessment of doses from intakes of radionuclides is not straightforward. Doses to the embryo/fetus may result from the inhalation or ingestion of radionuclides by the mother during or before pregnancy, and additional doses to the newborn child may result from the transfer of radionuclides in breast milk. The ICRP publications provide dose coefficients for the offspring (embryo/fetus and newborn child) following radionuclide intake by the mother before or during pregnancy and during breast feeding. In many important cases of potential radionuclide intake, doses to the offspring may exceed doses to the mother; such cases should be taken into account in the development of radiation protection programs.[26]

To provide adequate radiation protection for the embryo/fetus, and to minimize the restriction on employment, the NRC recognized the importance of female workers voluntarily informing their employers of their pregnancy and the estimated date of conception, so that arrangements can be made to restrict potential exposures. The pregnant worker has the fundamental responsibility for deciding when or whether she will formally declare her condition to her employer. This position is derived from court rulings concerning a woman's rights regarding pregnancy. Having a formal declaration of pregnancy derives from legal, not health protection, considerations (56 FR 23373; May 21, 1991). If an occupational worker chooses not to declare her pregnancy, then the licensee will not be required under the Commission's regulations to limit her dose to the 5 mSv (500 mrem).

The undeclared pregnant occupational women are protected under the NRC's regulations for all workers. The normal occupational dose limits would still be in effect and would have to be complied with, and the dose would also have to be kept ''as low as is reasonably achievable.'' In addition, as part of her initial employment, the woman, like all occupational workers, should receive instructions in radiation protection (10 CFR 19.12), and a copy of the current version of Regulatory Guide 8.13 (56 FR 23373; May 21, 1991).

The ICRP Publication 103 (2007) recommends that the dose to the embryo/fetus of a declared pregnant worker provide the same general level of protection as that offered for a member of the public, which is 1 mSv (100 mrem). The ICRP recommends applying the 1 mSv (100 mrem) criterion after the declaration of pregnancy by the occupational worker.

The NRC has determined that it is appropriate and scientifically justified to explore whether to change the dose limit for the embryo/fetus to 1 mSv (100 mrem). In its 1991 final rule that amended 10 CFR part 20, the NRC changed the dose limit for a member of the public from 5 mSv (500 mrem) to 1 mSv (100 mrem); however, it did not make the corresponding change to the dose limit for the embryo/fetus. Lowering the dose limit for the embryo/fetus of a declared pregnant occupational worker would align the NRC's regulatory requirements with current scientific data. The data indicate that the embryo/fetus is more sensitive to radiation than initially surmised. This approach would also align the NRC's regulations with the ICRP Publication 103 (2007) recommendations. The option of applying the limit over the entire gestation period, or only to the portion of time following declaration, would need to be explored in greater detail.

The Issue Paper 3, ''Dose Limit for the Embryo/Fetus of a Declared Pregnant Occupational Worker,'' provides a more detailed discussion and is available in ADAMS under Accession No. ML14084A339. In addition, the following questions are intended to elicit information from the public, the regulated community, and other stakeholders to obtain this information.

Questions

Q3–1: Are there any significant anticipated impacts associated with reducing the dose limit to the embryo/fetus of a declared pregnant woman, including operational impacts? What are the potential implementation and operational costs?

Q3–2: Are there any benefits or impacts associated with applying the reduced dose limit over the entire gestation period, or only to the period after declaration?

Q3–3: Are there any anticipated implementation impacts on recordkeeping if the dose limit to the embryo/fetus is lowered to 1 mSv (100 mrem)? What are the potential implementation and operational costs?

Q3–4: Are there technological implementation issues, such as limits of detection, which would make adoption of the ICRP Publication 103 (2007) recommendation difficult in certain circumstances?

Q3–5: Are there data on actual dose distributions to the embryo/fetus of a declared pregnant worker? What are the trends for these data?

D. Individual Protection—ALARA Planning

Each NRC licensee is required to develop, document, and implement a radiation protection program commensurate with the scope and extent of its licensed activities.[27] In addition to meeting expressed dose limits, the NRC requires its licensees to apply the ALARA principle to their licensed operations. Section 20.1003 defines the term ALARA as ''making every reasonable effort to maintain exposures to radiation as far below the dose limits in this part [10 CFR part 20] as is practical consistent with the purpose for which the licensed activity is undertaken . . .''[28] The NRC's current ALARA requirements are provided in subpart B of 10 CFR part 20, ''Radiation Protection Programs,'' and are contained in 10 CFR 20.1101(b) and (d). The current occupational dose limits are provided in subpart C of 10 CFR part 20, ''Occupational Dose Limits,'' and 10 CFR 20.1201 provides the occupational dose limits for adults.

In the United States, the majority of occupationally exposed individuals receive less than 20 mSv (2 rem) per year as reported to the NRC.[29] However,

[26] See ICRP Publication 60 (1991); ICRP Publication 75 (1997), ''General Principles for the Radiation Protection of Workers;'' and ICRP Publication 96 (2005), ''Protecting People against Radiation Exposure in the Event of a Radiological Attack.''

[27] 10 CFR 20.1101(a).

[28] 10 CFR 20.1003 (definition of ''ALARA (acronym for 'as low as is reasonably achievable' '').

[29] NUREG–0713, ''Occupational Radiation Exposure at Commercial Nuclear Power Reactors and Other Facilities 2011'' (ADAMS Accession No. ML13095A191).

a small percentage of individuals receive larger exposures up to, and occasionally above, the NRC's current annual occupational limit of 50 mSv (5 rem). While nuclear power reactor operators have been successful in reducing individual exposures, such that only a very limited number of individuals exceed 20 mSv (2 rem) in a year,[30] this is not the case in other segments of the regulated community. For example, industrial radiographers have a somewhat greater percentage of individuals above the average annual dose level of 20 mSv (2 rem) recommended in ICRP Publication 103 (2007). Stakeholder interactions have led the NRC staff to conclude that some of these individuals may be receiving doses close to the 50 mSv (5 rem) limit over multiple years. As described in Section IV.E. of this ANPR and Issue Paper 6, ''Reporting of Occupational Exposure'' (ADAMS Accession No. ML14084A344), detailed information on these cumulative exposures is difficult to ascertain because some segments of the regulated community are not required to report occupational exposure, therefore making it difficult ''to assure that lifetime exposure of workers repeatedly exposed near the limits is minimized'' (52 FR 2822; January 27, 1987).

The NRC's regulation in 10 CFR 20.1101(b) provides that each licensee ''shall use, to the extent practical, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and doses to members of the public that are as low as is reasonably achievable (ALARA).'' The NRC's current regulations in 10 CFR part 20 do not include an explicit requirement to plan activities to optimize radiation protection (ALARA planning) or to establish ALARA planning values as part of the licensee's radiation protection program. With respect to nuclear power reactors, the NRC staff has issued Regulatory Guide 8.8, Revision 3, ''Information Relevant to Ensuring that Occupational Radiation Exposures at Nuclear Power Stations Will Be As Low As Is Reasonably Achievable'' (ADAMS Accession No. ML003739549), which describes methods to implement the existing ALARA requirements, including detailed ALARA planning for use in the operations of commercial power reactors. However, this level of ALARA planning is not as common in the programs of other types of NRC licensees.

The NRC notes that its implementation and enforcement of its ALARA principles are generally made through specific license conditions instead of through more detailed regulations. Therefore, the NRC staff questions whether additional regulatory requirements are appropriate to foster a clear and consistent approach for all types of licensees versus relying upon license conditions.

In SRM–SECY–12–0064, dated December 17, 2012 (ADAMS Accession No. ML12352A133), the Commission directed the NRC staff to continue discussions with stakeholders on alternative approaches to deal with individual protection at or near the current dose limit. The NRC is currently examining possible mechanisms for addressing individual protection at, or near, the current occupational dose limit of 50 mSv (5 rem) per year. One potential mechanism for achieving this goal is to revise 10 CFR 20.1101, ''Radiation Protection Programs,'' to include additional requirements for implementing ALARA. Furthermore, reducing exposures through consistent ALARA implementation is a straight forward method for addressing concerns about a worker receiving a cumulative occupational dose, at or near the dose limit, over a number of years.

In addition, the NRC is interested in other proposals for addressing individual protection at or near the current dose limit. During previous public interactions, some stakeholders expressed an interest in strengthening the current ALARA requirements, whereas others expressed opposition to any additional requirements. Some stakeholders who opposed additional ALARA requirements expressed concerns that such additional requirements would become de facto limits and would inhibit the flexibility of licensees to deal with specific operational circumstances.

The NRC staff believes that the objective of any additional regulatory requirements should be to ensure the accurate monitoring of an individual's cumulative occupational dose and to ensure that progressive measures to reduce dose are taken, if necessary, as the cumulative dose increases. If the NRC determines that additional regulatory requirements are necessary to limit the cumulative occupational dose, then this objective could be achieved through either performance-based requirements, such as ALARA, prescriptive requirements, or both. Performance-based requirements express or describe the particular outcomes that must be achieved while leaving some discretion to a licensee on the specific mechanisms used to achieve those outcomes. On the other hand, prescriptive requirements specify a particular methodology or action that is necessary for compliance.

The establishment of ALARA planning values in administrative control levels, relative to the implementation of the ALARA principle, is not a new concept. The ''Federal Radiation Protection Guidance for Occupational Exposure'' (52 FR 2822, January 27, 1987; ADAMS Accession No. ML13269A320), provides a set of recommendations that incorporates this concept. The NRC and several other Federal agencies developed these recommendations, which were approved by President Reagan on January 20, 1987. The guidance states, ''Federal radiation guidance can address only the broad prerequisites of an effective ALARA program . . . authorities may find it useful to establish or encourage the use of . . . administrative control levels specifying, for specific categories of workers or work situations, dose levels below the limiting numerical values recommended in this guidance.''

The current regulations do not require licensees to have a structured ALARA planning process. Therefore, the NRC is considering the development of a requirement for ALARA radiation protection planning. This additional ALARA planning requirement would provide a basis to ensure that licensees have an ongoing process to review radiation exposures, to consider if changes are warranted and practical to reduce exposures, and to ensure the implementation of appropriate programmatic changes.

In conjunction with developing a requirement for ALARA planning, the NRC is considering developing a mechanism to address additional protection when an individual occupational worker nears his or her annual dose limit, and developing cumulative dose criterion that would control doses that an individual worker may receive over a multiple-year period. In this regard, the NRC would require each licensee, as a part of its radiation protection program, to establish mechanisms to examine cumulative occupational doses, and to implement control measures limiting additional doses if an occupational worker approaches his or her cumulative dose criterion. If the NRC ultimately issues such a requirement, it would develop associated guidance to address the various types of licensed activities.

[30] NCRP Report No. 160, ''Ionizing Radiation Exposure of the Population of the United States,'' 2009.

Specifically, regulatory guidance could describe the types of methodologies that the NRC staff could consider acceptable to meet the regulatory requirement of controlling dose as an individual occupational worker approaches the annual dose limit, or his or her cumulative dose criterion. The NRC is considering using various methodologies that are based on national and international recommendations. One potential methodology could be for a licensee to use the ICRP Publication 103 (2007) recommendations for an average dose over a 5-year period of 20 mSv (2 rem) as an administrative control level (ACL).[31] If no individual at the licensed facility exceeded the ACL on an annual basis, then no additional actions would be needed by the licensee other than continued monitoring of exposures. However, if an individual exceeded the ACL in any particular year, the licensee could commit to tracking and limiting the dose of that worker over a 5-year period; the licensee would need to maintain the cumulative occupational dose records during this period.

A second potential methodology for establishing an ACL could be based on the NCRP Report 116, ''Limitation of Exposure to Ionizing Radiation,'' which recommended an age based cumulative dose restriction. The NCRP Report 116 recommended an occupational dose limit of 50 mSv (5 rem) per year and a cumulative occupational dose limit of 10 mSv (1 rem) times the individual's age in years. Therefore, a licensee could establish an ACL at the 10 mSv (1 rem) level, and if this level is exceeded in any one year, the licensee would apply cumulative dose tracking to ensure that the cumulative age based dose limit for the individual is not exceeded.

In a third potential methodology, a licensee could establish an ACL based on lifetime exposures instead of the yearly approach to dose limits as in ICRP or NCRP recommendations. Under this approach, a licensee could commit to tracking the cumulative occupational doses for each worker and to applying specific additional restrictions if the cumulative occupational dose exceeded a set lifetime cumulative ACL value. Example values of cumulative ACL, such as 0.5 Sv (50 rem) or 0.75 Sv (75 rem), over the worker's lifetime could serve as appropriate fractions of the upper (tolerable) cumulative lifetime dose limit found in ICRP and NCRP recommendations. This approach could work in conjunction with regulations for cumulative occupational dose recordkeeping requirements to ensure that licensees took appropriate actions if dose limits are exceeded.

The preceding methodologies are presented as possible approaches for implementing a general performance requirement. Alternatively, the regulation could specifically incorporate one or more of these methodologies as a new prescriptive requirement. The NRC is interested in obtaining stakeholder input on the use of a performance or prescriptive approach, the rationale as to why one approach is preferable over the other, and any other alternatives that the NRC should consider as acceptable.

The NRC is also considering whether an additional requirement is necessary to address the question of concurrent occupational doses of an individual working at multiple licensed facilities. Situations may occur in which workers receive occupational exposures at more than one facility concurrently. One approach could be to expand the scope of 10 CFR 20.2104(a) to cover workers' concurrent employment by two or more licensees during the same period of time (e.g., a weekday shift at one licensee's facility followed by a weekend shift at another licensee's facility). Presently, the regulations require licensees to determine the yearly occupational doses received by its workers. In this regard, 10 CFR 20.2104(c) could be revised to add the phrase ''and any concurrent'' to statements that now only specify the individual's most recent employer.

As discussed previously, before the 1991 amendments to 10 CFR part 20, the NRC's regulatory framework included the formula D=*5 (N–18),* where *''N''* is the person's age in years, and where *''D''* is the lifetime dose limit in rems.[32] As part of the implementation of this former regulation, workers were required to provide NRC Form 4, ''Cumulative Dose History Report,'' when reporting to a new facility. However, the 1991 amendments to 10 CFR part 20 removed this requirement and the lifetime dose limit formula. The statement of considerations for the 1986 proposed rule (which led to the 1991 final rule) explains the lifetime dose limit formula was eliminated as a measure to reduce annual and lifetime doses to occupational workers (51 FR 1092, 1121; January 9, 1986). As a result, there is now no requirement in the NRC's regulations for a licensee to receive a cumulative dose history report (NRC Form 4 or equivalent) from a new employee.

The various types of radioactive material licenses pose different challenges to the control of occupational doses (e.g., industrial radiography, nuclear medicine). In some situations, the design and operation associated with the use of radioactive material limits the occupational dose. Conversely, some uses of radioactive materials can result in significant occupational doses that may be near the annual dose limit. Therefore, the spectrum of radioactive material licenses presents a wide range of challenges and opportunities for reducing occupational doses under ALARA provisions, especially when exposures approach the limits. The NRC is seeking to understand how to ensure that a greater focus is placed on keeping occupational doses ALARA, consistent with the wide range of uses of radioactive material that are licensed. The NRC also seeks to understand the potential impacts of the methodologies that were previously discussed, including any potential difficulties associated with implementation if such methodologies were made requirements by rulemaking.

The Issue Paper 4, ''Individual Protection—ALARA Planning,'' provides more detailed information and is available in ADAMS under Accession No. ML14084A340. In addition, the following questions are intended to elicit information from the public, the regulated community, and other stakeholders to obtain this information.

Questions

Q4–1: What are the potential implications of adding specific ALARA planning and implementation requirements to the 10 CFR part 20 regulations? What changes to licensee radiation protection programs could be anticipated? What would be the potential implementation and operational costs?

Q4–2: What regulatory language should be used for an additional ALARA planning requirement and what is the rationale for this language?

Q4–3: How does each of the described methodologies for addressing when an individual occupational worker approaches his or her cumulative dose for the year work for different classes of

[31] The 1987 ''Federal Radiation Protection Guidance for Occupational Exposure'' defines an ''administrative control level'' as a requirement ''determined by a competent authority of the management of an institution or facility. They are not primary limits, and may therefore be exceeded, upon approval of competent authority or management, as situations dictate'' (52 FR 2833; January 27, 1987).

[32] The former regulation, 10 CFR 20.101(b)(2), stated ''[t]he dose to the whole body, when added to the accumulated occupational dose to the whole body, shall not exceed 5 (*N–18*) rems where *'N'* equals the individual's age in years at his last birthday.'' The 1991 rulemaking revised and renumbered the NRC's radiation protection regulations in 10 CFR part 20.

licensed uses (e.g., a worker at a nuclear reactor power plant versus an industrial radiographer versus medical personnel)? What are the benefits and impacts of the various approaches to ALARA planning on the various types of licenses?

Q4–4: Should licensees be allowed to establish different ACLs for different groups of occupational workers? If so, what should be the basis for the various groupings?

Q4–5: How do the different methodologies previously discussed impact the ability of licensees to best address radiation protection within their programs?

Q4–6: Other than the methodologies discussed in the preceding section, are there other ways to evaluate occupational lifetime cumulative exposures that should be considered?

Q4–7: What are the potential impacts to licensees, contractors, and dosimetry vendors of amending 10 CFR 20.2104 to require a licensee to account for exposure from an occupational worker's concurrent employment with another licensee? Are there any dosimetry vendors that provide concurrent dose records? Should the NRC consider provisions that would require individual occupational workers to provide their occupational dose information in addition to requiring such information from licensees?

Q4–8: Should the Agreement States be allowed to use more restrictive or prescriptive requirements if the NRC decides to use a performance-based approach? What are the benefits and impacts of the various methodologies discussed in the preceding section on Agreement State regulatory programs and Agreement State licensees? If the NRC issues a proposed rule, this information will be important in establishing an appropriate Agreement State compatibility level for any proposed regulatory requirements.

E. Metrication—Units of Radiation Exposure and Dose

The current 10 CFR part 20 radiation protection regulations were promulgated approximately 1 year before to the publication of the NRC's metrication policy (57 FR 46202; October 7, 1992). The metric system is also known as the International System of Units (SI). Therefore, most NRC dose limits and other units of measurements are listed in the regulations with the traditional or ''English'' (also known as non-SI) units first followed by the metric units in parentheses. Some NRC regulations list metric units first followed by traditional or ''English'' units in parentheses. Numerical information in the appendices to 10 CFR part 20 is a mixture of traditional and metric units. For example, the DACs in 10 CFR part 20, appendix B, Table 1, are in units of microcuries per milliliter (μCi/ml); therefore, the activity is in traditional units and the volume is in metric units. By contrast, appendix C of 10 CFR part 20 only displays numerical information using the traditional units of measurement.

In SRM–SECY–12–0064, the Commission disapproved the elimination of traditional units from the NRC's regulations. The SRM further stated that both the traditional and SI units should be maintained. Pursuant to the NRC's 1992 metrication policy, the NRC supports and encourages the use of the metric system of measurement by the nuclear industry. The 1992 policy directed the NRC staff, beginning in 1993, to publish the following documents in dual units of measurement with the SI units listed first followed by the ''English'' units in parentheses: New regulations, major amendments to existing regulations, regulatory guides, NUREG-series documents, policy statements, information notices, generic letters, bulletins, and all written communications directed to the public. In addition, the NRC's policy provided that licensee-specific NRC documents, such as licensee inspection reports and licensee-specific docketed material, use the system of measurements utilized by the licensee. Furthermore, the policy provided that all event reporting and emergency response communications between licensees, the NRC, and State and local authorities will use the traditional units of measurement. In a 1996 review of its 1992 metrication policy, the Commission stated that it does not intend to revisit the 1992 policy unless it is shown to cause an undue burden or hardship (61 FR 31169, 31171; June 19, 1996).

The implementation of the NRC's metrication policy is not consistent with respect to the units of measurement used in recordkeeping and reporting. The NRC's regulations in 10 CFR 20.2101(a), ''Records,'' currently require licensees to use the traditional units. Therefore, licensees cannot use the metric units even if they wanted to do so. Section 20.2101(b) allows licensees to record quantities in SI units in parentheses after the traditional units. Section 20.2101(c) requires information recorded on shipping manifests, (e.g., shipments to low-level waste disposal facilities) as required by 10 CFR 20.2006(b), to be listed in SI units or both SI and traditional units. In addition, some NRC regulations require licensee reports to present information with the traditional units first followed by the SI units in parentheses.

The requirement to keep all records in traditional units, or in both sets of units, could be seen as inconsistent with a revised regulation in which the dose criteria are expressed first in SI units followed by the traditional units. One alternative could be to amend the regulations to allow a licensee to maintain records in either set of units as long as only one set of units was used throughout a licensee's recordkeeping system. Another alternative could be to allow a licensee to use either set of units in measurements and calculations; however, the licensee would be required to present the final values that support regulatory compliance in one or both sets of units. These various alternatives have different regulatory burdens and implementation issues. The NRC staff is seeking to gain additional information from stakeholders on the implications of the various alternatives, including the option that no change should be made.

As part of its draft regulatory basis development for a possible revision to the 10 CFR part 20 regulations, the NRC staff is examining the implementation of the Commission's metrication policy about how numerical material could be presented in appendix B of 10 CFR part 20. The NRC staff believes that the unique nature of appendix B, with its detailed numeric information for each radionuclide, may pose a situation in which a deviation from the metrication policy may be needed.

Two issues need to be addressed regarding the application of the Commission's metrication policy to appendix B to 10 CFR part 20. The first issue is the selection of the value that the NRC will consider as the regulatory standard. The values in appendix B are currently given in traditional activity units (microcuries (μCi)) with a certainty of one significant digit. One microcurie is equal to 3.7×10^4 becquerels (Bq) in the SI units; therefore, the conversion from microcurie to becquerel is completed by multiplying the activity in microcuries by 3.7×10^4. The resulting values in SI units (becquerels) could be more or less restrictive than the original microcurie values depending on the number of significant digits to which the value is rounded. For example, currently appendix B to 10 CFR part 20 provides the oral ingestion *ALI* for *Actinium-224* as 2×10^4 μ*Ci*. The corresponding value in the SI units before rounding to one significant digit is 7.4×10^7 Bq. If rounded to one significant digit, using the standard rounding conventions, the value in Bq would be smaller than the value in microcurie, and would be more

restrictive. Therefore, the NRC staff is exploring the implications of stating the numerical values in appendix B of 10 CFR part 20 like that used in in appendix A to 10 CFR part 37, ''Physical Protection of Category 1 and Category 2 Quantities of Radioactive Materials.''

In the development of appendix A to 10 CFR part 37, the NRC stated that the SI units provided the regulatory standard and the traditional units were provided for practical use only. Appendix A to 10 CFR part 37 provides in column 1 the name of the radioactive material, column 2 provides the source activity in terabecquerel (TBq), and column 3 provides the source activities in curies. In appendix A to 10 CFR part 37, the NRC also chose to forgo the conventional rounding to the nearest whole number or the rounding to the first significant figure after the decimal point. Rather, appendix A to 10 CFR part 37, column 3 lists curie activity equivalents as three significant figures because many NRC licensees use curies instead of becquerels for source radioactivity. The 10 CFR part 37 -approach of rounding to three significant figures greatly reduces any discrepancies between the two values (the source strength in curies and the source strength in becquerels).

The second issue is the presentation of numerical information in the appendices to 10 CFR part 20. If the NRC staff implements the Commission's metrication policy in appendix B to 10 CFR part 20 (i.e., SI units listed first followed by traditional units in parentheses), the table could become more complicated. At present, appendix B of 10 CFR part 20 consists of three columns providing each radionuclide's name, symbol, and the solubility class, followed by six additional columns providing each radionuclide's ALIs and DACs, concentration limits for airborne and liquid effluents released to the general environment, and concentration limits for discharges to sanitary sewer systems in microcuries or microcuries per milliliter. Implementation of the metrication policy would effectively add six additional columns to provide the traditional unit numeric counterpart for each value in parentheses next to the corresponding values in the SI units. An alternative could be to publish the traditional unit values in a separate guidance document for the convenience of users; this alternative would an exception to the Commission's metrication policy.

The NRC staff is interested in stakeholder views on potential options on the application of the Commission's metrication policy to any potential 10 CFR part 20 revisions. Specifically, the NRC staff is seeking input on: (1) What are some of the potential options; (2) what are the impacts of the option on the format and the usefulness of the NRC's regulations; and (3) what are some of the impacts of the option on licensee operations, especially any benefits, burdens, or undue hardship. Using two units of measurements, traditional and SI units has the potential for causing communication challenges. Therefore, the NRC staff is interested in the implications and impacts of aligning any potential revisions to 10 CFR part 20 with the Commission's existing metrication policy, and with other possible changes that could be considered as aligning to such a change.

The Issue Paper 5 ''Metrication—Units of Radiation Exposure and Dose,'' provides more detailed information and is available in ADAMS under Accession No. ML14084A343. In addition, the following questions are intended to elicit information from the public, the regulated community, and other stakeholders.

Questions

Q5–1: Will promulgation of amendments to the 10 CFR part 20 regulations with dose limits and other measurements shown in dual units, with the SI units shown first, followed by the traditional units in parentheses, cause an undue burden or hardship upon any licensee or class of licensees? If so, please explain and provide examples, including any potential implementation or operational costs.

Q5–2. Should 10 CFR 20.2101(a) be revised to allow licensees the option of providing records in SI units or in traditional units? Should licensees be allowed to provide reports in the units used in licensee records? Should licensees be required to record and report in both sets of units? Please provide reasons why or why not.

Q5–3. Should the NRC amend the appendices for 10 CFR part 20 to show values in SI units only, in traditional units only, or in both sets of units? If both SI and traditional units are provided, which set of units should be considered as the regulatory standard? If only one set of units is specified, what would be the most effective means to provide the other set of units (e.g., in a separate guidance publication)? Please provide reasons why or why not.

F. Reporting of Occupational Exposure.

On December 19, 1968, the AEC published an amendment to 10 CFR part 20 in the **Federal Register** (33 FR 18926) that added new 10 CFR 20.407, ''Personnel exposure and monitoring reports.'' [33] This new section required the reporting of occupational radiation exposure information to a central repository at AEC headquarters. The amendment required four categories of licensees to report: (1) Commercial nuclear power reactors, (2) industrial radiographers, (3) fuel processors and fabricators, and (4) manufacturers and distributors of byproduct material. The Commission considered these licensees to have the greatest potential for significant occupational doses. The AEC established this reporting requirement to assist in the following actions: (1) Identifying those individuals who are monitored by more than one licensee or AEC contractor, (2) analyzing radiation exposure experience and identifying general exposure trends from year to year, (3) analyzing the exposure experience of AEC contractors and the four listed categories of licensees, (4) initiating appropriate remedial action where trends or experience in increased radiation exposures indicate the need for more effective controls, and (5) considering and developing appropriate modifications to radiation protection standards and requirements.

On January 19, 1975, the NRC was formed and on May 30, 1975, the NRC published a proposed rule in the **Federal Register** (40 FR 23478) that would require all NRC-specific licensees to submit personnel monitoring data to the agency. By a letter dated June 2, 1975 (43 FR 44827), a copy of the notice of the proposed rule was mailed to all NRC-specific licensees (e.g., well loggers, medical and academic institutions, industrial radiographers, and portable gauge users). Thirty-six comments were received on the proposed rule. The majority of the comments supported the proposed rule, but offered suggestions for improvement. Medical licensees raised the majority of the opposition to the proposed rule. Their opposition was based on the following issues: (1) Additional paperwork would increase the cost of health care; (2) the personnel monitoring data might have theoretical value, but no practical value; (3) the NRC failed to demonstrate a sufficient cost versus benefit ratio for another administrative requirement; (4) occupational exposures (in medical diagnosis and therapy) are already ALARA; (5) the requirements for

[33] In a final rule dated September 29, 1978 (43 FR 44827, 44829), the NRC renumbered 10 CFR 20.407 as 10 CFR 20.408. Section 20.408 later became the basis for current 10 CFR part 20 reporting regulation, 10 CFR 20.2206, which lists seven categories of licensees required to submit an annual report of the results of individual monitoring of occupational exposure.

reporting overexposures are adequate; (6) only licensees with repeated overexposures should be required to submit annual reports; (7) separating exposures received from NRC-licensed material from exposures received from non-NRC-licensed materials is not possible; and (8) personnel monitoring data contain inherent inaccuracies.

In response to these comments, in a letter dated August 25, 1976, the NRC requested that all NRC-specific licensees voluntarily submit personnel monitoring data for calendar year 1975, along with the total cost for preparing the data in man-hours and dollars-cents. The licensees' responses indicated a total man-hours cost median of 2.75 minutes, and $0.65 per monitored individual to collect the requested information (NUREG–0419, ''Occupational Radiation Exposure at NRC-Licensed Facilities 1975, Office of Standards Development, U.S. Nuclear Regulatory Commission'').

After a series of amendments in the 1980s, the occupational reporting requirements in 10 CFR part 20 eliminated the provisions for all NRC-specific licensees to submit reports, and expanded the license reporting categories from four to the current seven, which are: (1) Commercial nuclear power reactors, (2) industrial radiographers, (3) fuel processors and fabricators, (4) manufacturers and distributors of certain byproduct material, (5) geologic repositories for high-level waste (HLW), (6) independent spent fuel storage installations (ISFSIs) and (7) facilities for the land disposal of low-level waste (LLW) (46 FR 13978, February 25, 1981; 46 FR 58282, December 1, 1981; and 47 FR 57480, December 27, 1982).

The current occupational reporting provisions were moved to 10 CFR 20.2206, ''Reports of Individual Reporting,'' as a part of the 1991 amendments to 10 CFR part 20. Section 20.2206 requires seven categories of licensees to provide an annual report of the monitoring of occupational dose each April 30th (covering the prior calendar year) to the NRC's REIRS database. At present, five categories of NRC licensees report information to the database, namely: (1) Commercial nuclear power reactors; (2) industrial radiographers; (3) fuel processors (including uranium enrichment facilities), fabricators, and reprocessors; (4) ISFSIs; and (5) manufacturers and distributors of certain byproduct material. The NRC's REIRS database does not include occupational information for the two other reporting categories, LLW and HLW facilities, because the NRC has no licensees in those categories. As a result, the database provides a system for maintaining all relevant occupational doses received at nuclear power reactors, fuel processors and fabricators, and ISFSIs in the United States, because all of these facilities are licensed by the NRC regardless of whether they are (even if located in an Agreement State).

Currently, a reporting gap exists because industrial radiographers, and manufacturers and distributors of certain byproduct material, who hold Agreement State licenses, instead of NRC licenses, are not subject to the reporting requirements in 10 CFR 20.2206. As described in the following paragraphs and Section VII.B., Issue Paper 6, ''Reporting of Occupational Exposure'' (ADAMS Accession No. ML14084A344), Agreement States are not required to adopt the provisions in 10 CFR 20.2206. Consequently, the NRC has experienced significant difficulty in developing reasonable assessments of the overall occupational doses received from industrial radiographers, and manufacturers and distributors of certain byproduct material, since the majority of these licensees are regulated by Agreement States. In addition, as identified in the chart in Section V of Issue Paper 6, several categories of NRC radioactive material licensees are not subject to the 10 CFR 20.2206 reporting requirements. Therefore, the NRC lacks occupational exposure data for several categories of radioactive material licensees.

The NRC's regulations in 10 CFR 20.2206(b) require certain categories of NRC licensees to submit an annual report of the results of the monitoring required by 10 CFR 20.1502 to the NRC's REIRS database. The NRC does not require Agreement States to adopt the 10 CFR 20.2206 provisions. Although an Agreement State can choose not to require their licensees to submit annual reports of occupational radiation dose information to either itself or the NRC, some Agreement State licensees voluntarily report occupational dose information to the REIRS database.

In addition, to expand the Agreement State occupational radiation dose information contained in the NRC's REIRS database, on August 6, 2010, the NRC sent a letter to Agreement State Radiation Control Programs (ADAMS Accession No. ML102100390). This letter requested Agreement State assistance in obtaining occupational radiation dose information from their licensees in the categories of industrial radiography and nuclear pharmacy for the monitoring period of 2000 through 2009.

During the period of 1997 through 2010, the NRC received occupational dose reports from 312 Agreement State licensees. The 312 licensees represented less than 2 percent of the total number of Agreement State licensees, at that time. The NRC staff review of the reports indicated that the 312 Agreement State licensees monitored exposures of 40,622 occupational workers, and 78 percent (31,704) of these occupational workers received a measurable dose. The complete NRC staff review is available in NUREG–2118, Vol.1, ''Occupational Radiation Exposure at Agreement State-Licensed Materials Facilities, 1997–2010'' (ADAMS Accession No. ML12220A081).

Increased use of the NRC's REIRS database, could serve as a national occupational exposure database for both the NRC and Agreement States. If properly implemented, the database could correlate the occupational exposure of an individual to the licensed facility where the exposure was received. This information would be especially useful for those workers who work concurrently at more than one licensed facility, especially in the radioactive materials area. All of the nuclear power plant licensees are regulated by the NRC, and are required to report occupational exposures to the NRC's REIRS database. Therefore, it is possible to determine the occupational doses of nuclear workers that are employed at more than one nuclear facility, including determining whether a person is exceeding the occupational dose limits. However, there is no mechanism for the NRC or an Agreement State to determine whether an individual is exceeding the occupational dose limits as a result of concurrent employment at multiple licensed facilities, especially if the individual works in jurisdictions regulated by both the NRC and one or more Agreement States.

For example, a physician whose medical practice involves the use of radioactive materials could work concurrently in Washington, DC (an NRC jurisdiction), Alexandria, VA (an Agreement State jurisdiction), and Bethesda, MD (a different Agreement State jurisdiction). If Agreement State licensees provided reports to the NRC's REIRS database, then it would be possible to ensure that an individual who is concurrently employed by licensees in multiple jurisdictions does not exceed the occupational dose limits.

Moreover, increased use of the NRC's REIRS database by NRC and Agreement State licensees, could serve a vital function in evaluating the overall effectiveness of the NRC's regulatory

programs, and could be used by the NRC and Agreement States in inspection, enforcement, and incident response activities. It could also assist in assessing cumulative occupational doses on a national basis. The NRC staff is considering if new categories of licensees should be required to report to the database and how to effectively integrate any new reporting from NRC and Agreement State licensees into the system. Therefore, the NRC staff is pursuing that a more detailed examination of the implications, benefits, and costs of requiring additional categories of licensees to report exposures to the NRC's REIRS database. The Issue Paper 6, ''Reporting of Occupational Exposures,'' provides a more detailed discussion of the background and proposals on the reporting of occupational doses to the database including a chart in Section V that lists several categories of NRC radioactive material licensees where input is needed from the public. In addition, the following questions are intended to elicit information from the public, the regulated community, and other stakeholders.

Questions

Q6–1: What criteria should the NRC use to identify additional categories of licensees that should be required to submit annual occupational exposure reports under 10 CFR 20.2206(a)?

Q6–2: What are the benefits of collecting occupational exposure information in one central database to assess the total annual occupational exposure of those individuals who work at more than one licensed facility or contractor facility during the calendar year and receive occupational exposures at these facilities?

Q6–3: Should Agreement States be required to adopt regulations that are compatible with the requirements in 10 CFR 20.2206?

Q6–4: Should the NRC consider a gradual expansion of the 10 CFR 20.2206 licensee reporting categories in a step-wise fashion (e.g., staggered compliance dates for different categories of licensees)? What are the advantages or disadvantages for this option?

Q6–5: What are the potential implementation and operational costs associated with expanding the occupational exposure reporting requirements?

V. Public Meetings

The NRC plans to hold a series of Category 3 public meetings specific to the six issues identified in this ANPR. The public meetings will be held during the ANPR public comment period. The public meetings will provide forums for the NRC staff to discuss the issues and questions identified in the ANPR with external stakeholders and to receive information to support development of a draft regulatory basis for a potential revision of the radiation protection requirements in 10 CFR part 20. The NRC does not intend to provide detailed responses to comments or other information submitted during the public meetings. Each public meeting will be noticed on the NRC's public meeting Web site at least 10 calendar days before the meeting. Stakeholders should monitor the NRC's public meeting Web site for additional information about the public meetings at *http://www.nrc.gov/public-involve/public-meetings/index.cfm.* The NRC will post the notices for the public meetings and may post additional material related to this action to the Federal rulemaking Web site at *www.regulations.gov* under Docket ID NRC–2009–0279. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2009–0279); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

VI. Cumulative Effects of Regulation

The NRC has implemented a program to address the possible ''cumulative effects of regulation'' (CER) in the development of regulatory bases for rulemakings. The CER describes the challenges that licensees or other impacted entities (such as Agreement States) may face while implementing new NRC or other agency regulatory requirements. The CER is an organizational effectiveness challenge that results from a licensee or other impacted entity implementing a number of complex positions, programs, or requirements within a prescribed implementation period and with limited available resources, including the ability to access technical expertise to address a specific issue. The NRC is specifically requesting comment on the cumulative effects that may result from a potential amendment to 10 CFR part 20. In developing comments on the possible cumulative effects of any future 10 CFR part 20 rulemaking, please consider the following questions:

(1) In light of any current or projected CER challenges, what could be considered as a reasonable effective date, compliance date, or submittal date(s) from the time any potential final rule is published to the implementation date of any new requirements, including changes to programs, procedures, or facilities?

(2) If there are current or projected CER challenges, what could be done to address them (e.g., if more time is anticipated to implement the potential new requirements, what period of time is estimated to be sufficient, and why would such a proposed time frame be necessary)?

(3) Please identify any current or projected regulatory actions by the NRC or another regulatory agency (such as new or amended regulatory requirements or orders) that could potentially influence the implementation of any potential 10 CFR part 20 rulemaking?

(4) Are there any possible unintended consequences resulting from a potential 10 CFR part 20 rulemaking, such as the possibility that this potential rulemaking could create conditions that would be contrary to the potential action's purpose and objectives? If so, what are the anticipated consequences and how could they be addressed?

(5) Is there any potential costs and benefits information available at this time on a potential 10 CFR part 20 rulemaking?

VII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this ANPR to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883). The NRC requests comment on this ANPR and the draft regulatory basis issues papers (see Section VIII of this ANPR) with respect to the clarity and effectiveness of the language used.

VIII. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No./Web link
The ICRP Publications referenced in this ANPR are copyright protected. The NRC cannot reproduce or provide copies of these documents. For additional information regarding obtaining copies of ICRP Publications, please see the ICRP Web site.	*http://www.icrp.org/publications.asp.*
The NCRP Publications referenced in this ANPR are copyright protected. The NRC cannot reproduce or provide copies of these documents. For additional information regarding obtaining copies of NCRP Publications, please see the NCRP Web site.	*http://www.ncrponline.org/Publications/Publications.html.*
Issue Paper 1: Update 10 CFR Part 20 to Align with International Commission on Radiological Protection Publication 103 Methodology and Terminology.	ML14084A342.
Issue Paper 2: Occupational Dose Limit for the Lens of the Eye	ML14084A341.
Issue Paper 3: Dose Limit for the Embryo/Fetus of a Declared Pregnant Occupational Worker	ML14084A339.
Issue Paper 4: Individual Protection—ALARA Planning	ML14084A340.
Issue Paper 5: Metrication—Units of Radiation Exposure and Dose	ML14084A343.
Issue Paper 6: Reporting of Occupational Exposure	ML14084A344.
A Review of the History of U.S. Radiation Protection Regulations, Recommendations, and Standards,'' by C.G. Jones, *Health Physics Journal,* February 2005, Vol. 88, No. 2, pages 105–126.	ML050400427.
SECY–01–0148, ''Processes For Revision of 10 CFR Part 20 Regarding Adoption Of ICRP Recommendations On Occupational Dose Limits And Dosimetric Models and Parameters,'' dated August 2, 2001.	ML011580363.
SRM–SECY–01–0148, ''Processes For Revision of 10 CFR Part 20 Regarding Adoption Of ICRP Recommendations On Occupational Dose Limits And Dosimetric Models And Parameters,'' dated April 12, 2002.	ML021050104.
SECY–08–0197, ''Options To Revise Radiation Protection Regulations And Guidance With Respect To The 2007 Recommendations of ICRP,'' dated December 18, 2008.	ML083360555.
SRM–SECY–08–0197, ''Options To Revise Radiation Protection Regulations And Guidance With Respect To The 2007 Recommendations of ICRP,'' dated April 2, 2009.	ML090920103.
SECY–12–0064, ''Recommendations For Policy And Technical Direction To Revise Radiation Protection Regulations And Guidance,'' dated April 25, 2012.	ML121020108.
SRM–SECY–12–0064, ''Recommendations For Policy And Technical Direction To Revise Radiation Protection Regulations And Guidance,'' dated December 17, 2012.	ML12352A133.
Regulatory Guide 8.8, Revision 3, ''Information Relevant to Ensuring that Occupational Radiation Exposures at Nuclear Power Stations Will Be as Low as Is Reasonably Achievable''.	ML003739549.
DOE Technical Standard, DOE–STD–1196–2011, ''Derived Concentration Technical Standard''	ML13323B598.
''Federal Radiation Protection Guidance for Occupational Exposure'' (52 FR 2822; January 27, 1987)	ML13269A320.
Regulatory Guide 8.13 ''Instruction Concerning Prenatal Radiation Exposure,'' March 31, 1975	ML13350A220.
NUREG–0713, ''Occupational Radiation Exposure at Commercial Nuclear Power Reactors and Other Facilities 2011''.	ML13095A191.
NUREG–2118, ''Occupational Radiation Exposure at Agreement State-Licensed Materials Facilities,'' 1997–2010.	ML12220A081.

X. Rulemaking Process

The NRC will consider comments received or other information submitted in response to this ANPR in the development of the proposed draft regulatory basis or any other documents developed as a part of any potential 10 CFR part 20 rulemaking. The NRC, however, does not intend to provide detailed responses to comments or other information submitted in response to this ANPR. The information obtained through this ANPR process will be used to develop a draft regulatory basis. The draft regulatory basis will be published for public review and comment. If the NRC develops a regulatory basis sufficient to support a proposed rule, then there will be an opportunity for public comment when the proposed rule is published and the NRC will respond to such comments if and when it publishes a final rule. If the NRC develops draft supporting guidance for a proposed 10 CFR part 20 rulemaking, then the public, the regulated community, and other stakeholders will have an opportunity to provide comment on the draft guidance.

If the NRC decides not to pursue a 10 CFR part 20 rulemaking on this topic, the NRC will publish a document in the **Federal Register** that will generally address public comments and withdraw this ANPR.

Dated at Rockville, Maryland, this 8th day of July 2014.

For the Nuclear Regulatory Commission.

Mark A. Satorius,

Executive Director for Operations.

[FR Doc. 2014–17252 Filed 7–24–14; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

[Docket No. EERE–2009–BT–BC–0021]

10 CFR Part 460

Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC)—Manufactured Housing Working Group

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

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting for the Manufactured Housing Working Group (MH Working Group). The purpose of the working group will be to discuss and, if possible, reach consensus on a proposed rule for the energy efficiency of manufactured homes, as authorized by section 413 of the Energy Independence and Security Act of 2007 (EISA).

DATES: A two-day, open meeting will be held on:

Monday, August 4; 9 a.m.–5 p.m. (EDT) and

Tuesday, August 5; 9 a.m.–5 p.m. (EDT).

Foreign national wishing to participate in the meeting must respond by email to *asrac@ee.doe.gov* as soon as possible, but no later than Monday, July 28, 2014, to initiate the necessary security screening procedures.

ADDRESSES: U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Room 8E–089. Individuals will also have the opportunity to participate by webinar.

Webinar: To register for the webinar and receive call-in information, please register for Monday at *https://www1.gotomeeting.com/register/982871169* and for Tuesday at *https://www1.gotomeeting.com/register/370801721.*

FOR FURTHER INFORMATION CONTACT: Joe Hagerman, Senior Advisor, Building Technologies Office, U.S. Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy, 950 L'Enfant Plaza SW., Washington, DC 20024. Phone: 202–586–4549; Email: *asrac@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting

The purpose of the working group will be to discuss and, if possible, reach consensus on a proposed rule for the energy efficiency of manufactured homes, as authorized by section 413 of the Energy Independence and Security Act of 2007 (EISA). Tentative Agenda: (Subject to change):

- Overview of Working Group's Task
- Discussion and formation of a work plan for the MH Working Group to accomplish its objectives.

Public Participation

Members of the public are welcome to observe the business of the meeting and, if time allows, may make oral statements during the specified period for public comment. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, email *asrac@ee.doe.gov.* In the email, please indicate your name, organization (if appropriate), citizenship, and contact information. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise ASRAC staff as soon as possible by emailing *asrac@ee.doe.gov* to initiate the necessary procedures, no later than Monday, July 28, 2014. Anyone attending the meeting will be required to present a government photo identification, such as a passport, driver's license, or government identification. Due to the required security screening upon entry, individuals attending should arrive early to allow for the extra time needed.

Members of the public will be heard in the order in which they request to make a statement at the public meeting. Time allotted per speaker will depend on the number of individuals who wish to speak but will not exceed five minutes. Reasonable provision will be made to include the scheduled oral statements on the agenda. The co-chairs of the Committee will make every effort to hear the views of all interested parties and to facilitate the orderly conduct of business.

Participation in the meeting is not a prerequisite for submission of written comments. ASRAC invites written comments from all interested parties during the course of the negotiations. If you would like to file a written statement with the committee, you may do so either by submitting a hard or electronic copy before or after the meeting. Electronic copy of written statements should be emailed to *asrac@ee.doe.gov.*

Minutes: All notices, public comments, public meeting transcripts, and supporting documents associated with this working group are included in Docket No. EERE–2009–BT–BC–0021.

Issued in Washington, DC on July 15, 2014.

Kathleen B. Hogan,

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

[FR Doc. 2014–17557 Filed 7–24–14; 8:45 am]

BILLING CODE 6450–01–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 611 and 615

RIN 3052–AC84

Organization; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Investment Eligibility

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, Agency, us, our, or we) proposes to amend our regulations governing the eligibility of investments held by Farm Credit banks. We propose to strengthen these regulations by reinforcing that only high quality investments may be purchased and held. We also propose to revise these regulations to comply with section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or DFA) by removing references to and requirements relating to credit ratings and substituting other appropriate standards of creditworthiness. The FCA also proposes to revise its regulatory approach to Farm Credit System (System) association investments in order to limit the type and amount of investments that an association may hold. The proposed rule also addresses investment and risk management practices at associations and funding bank supervision of association investments.

DATES: You may send us comments by October 23, 2014.

ADDRESSES: We offer a variety of methods for you to submit comments on this proposed rule. For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through the Agency's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *Email:* Send us an email at *reg-comm@fca.gov.*
- *FCA Web site: http://www.fca.gov.* Select ''Public Commenters,'' then ''Public Comments,'' and follow the directions for ''Submitting a Comment.''
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Barry F. Mardock, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of all comments we receive at our office in McLean, Virginia, or on our Web site at *http://www.fca.gov.* Once you are in the Web site, select ''Public Commenters,'' then ''Public Comments,'' and follow the directions for ''Reading Submitted Public Comments.'' We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

Paul K. Gibbs, Senior Accountant, or Timothy T. Nerdahl, Senior Financial Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4414, TTY (703) 883–4056; or

Jennifer A. Cohn, Senior Counsel, or Richard A. Katz, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of this proposed rule are to:

- Strengthen the safety and soundness of Farm Credit banks [1] and associations; [2]
- Ensure that Farm Credit banks hold sufficient liquidity to continue operations and pay maturing obligations in the event of market disruption;
- Enhance the ability of the Farm Credit banks to supply credit to agricultural and aquatic producers;
- Comply with the requirements of section 939A of the Dodd-Frank Act;
- Modernize the investment eligibility criteria for Farm Credit banks; and
- Revise the investment regulation for associations to improve their investment management practices so they are more resilient to risk.

II. Background

Congress created System institutions, including Farm Credit banks and associations, to provide permanent, stable, and reliable sources of credit and related services to American agricultural and aquatic producers.[3] Associations obtain funds from Farm Credit banks to provide short-, intermediate-, and long-term credit and related services to farmers, ranchers, producers and harvesters of aquatic products, to rural residents for housing, and to farm-related businesses.[4]

Farm Credit banks depend on investments to provide liquidity and to fulfill other needs,[5] and investments also enable associations to manage the risks they confront.[6] Although Farm Credit banks obtain their funding primarily through the issuance of System-wide debt securities,[7] they must have enough available funds, including investments, to continue operations and pay maturing obligations if access to the debt market becomes temporarily impeded.

FCA regulations, at subpart E of part 615, impose comprehensive requirements regarding the investments of System institutions. We have recently revised many of these requirements, particularly those guiding prudent investment management practices.[8] This rulemaking proposes to revise the requirements governing the eligibility of investments for Farm Credit banks and associations, which have been largely unchanged since 1999, as well as the permissible investment amounts and purposes for associations.[9] The regulations this rulemaking proposes to amend should not be viewed in isolation, but rather as part of a comprehensive set of rules guiding the System's liquidity and investment management.

Investment products are becoming increasingly complex, and the financial crisis that began in 2007 made clear that some investments are riskier and less liquid than were previously believed. In addition, in July 2010 the President signed into law the Dodd-Frank Act to strengthen regulation of the financial industry in the wake of the financial crisis. Section 939A of the DFA requires each Federal agency to review all of its regulations that refer to or require the use of credit ratings to assess the creditworthiness of an instrument; to remove the reference or requirement; and to substitute other appropriate creditworthiness standards. FCA's existing investment eligibility regulations use credit ratings as a determinant of eligibility of some investments.

We now propose to comply with the DFA by eliminating the regulations' reliance on credit ratings. The financial crisis that began in 2007 identified flaws in relying on credit ratings to determine credit risk, as many investments with similar labels and ratings exhibited substantially differing underlying risk characteristics, ultimately impacting marketability of the investments. Investment eligibility would no longer depend on external credit ratings, thus enhancing safety and soundness. We also propose other amendments to the provisions governing Farm Credit banks that would strengthen the safety and soundness of their investment activities by more accurately reflecting the risk in particular investments.

Finally, we propose amendments to § 615.5142, which governs the investment activities of associations. We recognize that many associations may need to hold investments for purposes other than managing surplus short-term funds and reducing interest rate risk, which are the only investment purposes authorized by the existing regulations. For this reason, the proposed rule would grant associations greater flexibility to hold investments for other risk management purposes. At the same time, we propose to limit the types and amount of investments that associations may hold.

We first considered revisions to our Farm Credit bank and association investment regulations in 2011.[10] As discussed above, we adopted many of these revisions in 2012, but we did not revise the provisions governing investment eligibility and association investments, which we are now proposing to revise. The revisions we now propose take into consideration the comments we received in response to the earlier rulemaking, as well as the approaches some of the other Federal banking regulatory agencies have taken toward compliance with the DFA credit ratings elimination requirement.[11]

III. Section-by-Section Description of the Proposed Rule

The proposed rule enhances the credit quality standards for eligible investments that Farm Credit banks may hold and revises the regulation governing association investment activities. It also contains conforming amendments to other regulations in parts 611 and 615.

A. Section 615.5131—Definitions

We propose to define asset class as a group of securities that exhibit similar characteristics and behave similarly in the marketplace. Asset classes include, but are not limited to, money market

[1] Section 619.9140 of FCA regulations defines ''Farm Credit bank'' to include Farm Credit Banks, agricultural credit banks, and banks for cooperatives.

[2] Section 619.9050 of FCA regulations defines the term ''association'' to include (individually or collectively) a Federal land bank association, a Federal land credit association, a production credit association, and an agricultural credit association.

[3] The Federal Agricultural Mortgage Corporation (Farmer Mac), also a System institution, provides a secondary market for agricultural real estate mortgage loans, rural housing mortgage loans, and rural utility cooperative loans. Farmer Mac is not affected by this rulemaking, and the use of the term ''System institution'' in this preamble and proposed rule does not include Farmer Mac.

[4] One Farm Credit bank, known as an agricultural credit bank, also provides lending and other financial services to farmer-owned cooperatives, rural utilities (electric and telephone), and rural sewer and water systems, and it is also authorized to finance U.S. agricultural exports and provide international banking services for farmer-owned cooperatives.

[5] Section 615.5132(a) authorizes a Farm Credit bank to hold eligible investments to comply with its liquidity requirements, to manage surplus short-term funds, and to manage interest rate risk.

[6] As discussed below, proposed 615.5142 would enable associations, under specified conditions, to hold eligible investments to manage risk. Under § 611.1135(a), which we do not propose to revise, service corporations may hold investments for the purposes authorized for their organizers.

[7] Farm Credit banks use the Federal Farm Credit Banks Funding Corporation (Funding Corporation) to issue and market System-wide debt securities. The Funding Corporation is owned by the Farm Credit banks.

[8] 77 FR 66362, Nov. 5, 2012.

[9] Currently, § 615.5140 identifies eligible investments for both Farm Credit banks and associations. Section 615.5142 governs investment purposes for associations, and the amount of association investments is not prescribed by regulation.

[10] 76 FR 51289, Aug. 18, 2011.

[11] Office of the Comptroller of the Currency (OCC), 77 FR 35253 and 35259, June 13, 2012; Federal Deposit Insurance Corporation (FDIC), 77 FR 43151 and 43155, July 24, 2012.

instruments, municipal securities, corporate bond securities, mortgage-backed securities (MBS), asset-backed securities (ABS) (excluding MBS), and any other asset class as determined by the FCA. We discuss this definition later in this preamble.

We propose to define a collateralized debt obligation (CDO) as a debt security collateralized by MBS, ABS, or trust-preferred securities.

One of our proposed criteria for Farm Credit bank investments with an obligor located outside of the United States is a high Country Risk Classification (CRC) (a 0 or a 1) as published by the Organization for Economic Cooperation and Development (OECD).[12] We propose to define CRC, with respect to a sovereign, as the most recent consensus CRC published by the OECD as of December 31 of the prior calendar year that provides a view of the likelihood that the sovereign will service its external debt. This definition is identical to that adopted by the other Federal banking regulators in their capital rules to implement Basel III.[13] We proposed the same definition in the proposed revisions to our regulatory capital rule that the FCA Board adopted on May 8, 2014.[14]

We propose to define a diversified investment fund as an investment company registered under section 8 of the Investment Company Act of 1940, 15 U.S.C. 80a–8. This is consistent with our usage of the term in existing § 615.5140(a)(8).

We propose to replace the definitions for the existing terms ''Government-sponsored agency'' and ''Government agency'' with definitions for the new terms ''Government-sponsored enterprise (GSE)'' and ''United States (U.S.) Government agency,'' respectively. We would define GSE as an entity established or chartered by the U.S. Government to serve public purposes specified by the U.S. Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. Government. We would define U.S. Government agency as an instrumentality of the U.S. Government whose obligations are fully guaranteed as to the timely payment of principal and interest by the full faith and credit of the U.S. Government. These terminology changes would have no substantive effect.[15]

We propose to replace the defined term ''mortgage securities'' with ''mortgage-backed securities'' or ''MBS.'' We also propose to change ''mortgage securities'' to ''mortgage-backed securities'' in the definition of ABS. These technical changes are for consistency with other FCA regulations and would have no substantive effect.

We propose to add a new definition for the term ''obligor.'' Our existing regulations use this term, as do provisions that we propose to add or revise, but we have no definition for this term. We propose to define the term to ensure a common understanding of its meaning.

We would define obligor as an issuer, guarantor, or other person or entity who has an obligation to pay a debt, including interest due, by a specified date or when payment is demanded. This definition would include the debtor or immediate party that is obligated to pay a debt, as well as a guarantor of the debt. The definition would not include the sponsor (as we propose to define the term) of an investment, unless the sponsor has an obligation to pay the debt.

We propose to define ''sponsor'' as a person or entity that initiates a transaction by selling or pledging to a specially created issuing entity, such as a trust, a group of financial assets that the sponsor either has originated itself or has purchased; the sponsor may retain the obligation to repay or may transfer that obligation to the trust. An example of a sponsor would be an entity such as a commercial bank that transfers financial assets, such as loans that it has originated or purchased, to a bankruptcy remote trust known as a special purpose vehicle (SPV). In this example, the SPV services the debt and has the obligation to repay.

We propose to delete the following definitions because they will no longer be used in this subpart. We propose to delete ''eurodollar time deposits,'' ''final maturity,'' ''general obligations,'' ''liquid investments,'' ''nationally recognized statistical rating organization,'' ''revenue bond,'' and ''weighted average life''.

B. Section 615.5134—Liquidity Reserve

We propose to make technical, non-substantive revisions by adding the new terms ''Government-sponsored enterprise (GSE)'' and ''U.S. Government agency'' to our liquidity reserve regulation at § 615.5134, to conform to changes we made to those defined terms in § 615.5131. In addition, we propose changes to clarify that MBS must be *fully* guaranteed by a U.S. Government agency to qualify for Level 2 liquidity and *fully* guaranteed by a GSE to qualify for Level 3 liquidity.

C. Section 615.5140—Eligible Investments for Farm Credit Banks

Our existing investment eligibility regulation at § 615.5140 contains a detailed listing of eligible investment asset classes and types of investments within each asset class. The regulation imposes final maturity limits, investment portfolio limits, and other requirements for many of these investments. It also imposes credit rating requirements, based on NRSRO[16] credit ratings, for a number of the investments. The regulation currently applies to both Farm Credit banks and associations.

In revised § 615.5140, we propose to revise the investment eligibility requirements governing Farm Credit banks to strengthen their safety and soundness by more accurately reflecting the risk in particular investments based on recent experience in the marketplace.[17] In addition, to comply with section 939A of the DFA, we propose to replace the regulations' NRSRO credit ratings requirements with other standards of creditworthiness.

1. Paragraph (a)—Investment Eligibility Criteria

We propose the following criteria for Farm Credit banks to determine whether an investment is eligible. These criteria would replace the listing of eligible investments in our existing regulations.

a. Paragraph (a)(1)—Purpose

We propose to formalize our existing requirement that for an investment to be eligible, it must be purchased and held for an authorized purpose as set forth in § 615.5132(a). A Farm Credit bank must be able to identify the authorized purpose or purposes for which each investment is held.

b. Paragraph (a)(2)—Eligible Investments

The proposed regulation would specify the general requirements that

[12] *See* proposed § 615.5140(a)(3). We explain this criterion in the preamble discussion of that proposed provision.

[13] OCC and the Federal Reserve System, Final Rule, 78 FR 62018, Oct. 11, 2013; FDIC, Interim Final Rule, 78 FR 55340, Sept. 10, 2013, substantively adopted as final at 79 FR 20754, April 14, 2014.

[14] The proposed capital rule has not yet been published in the **Federal Register**.

[15] We propose to delete the word ''explicitly'' from our existing definition because all obligations guaranteed or insured by the U.S. Government are backed by the full faith and credit of the United States unless the law or the obligation itself provides otherwise. For this reason, the word ''explicitly'' is superfluous.

[16] Nationally Recognized Statistical Rating Organization.

[17] Revised § 615.5140 would apply to Farm Credit banks only. As discussed below, all association eligibility requirements would be located in revised § 615.5142.

investments must satisfy to be eligible. Limiting investments to those that satisfy these general requirements will ensure that investments are of high quality.

i. Paragraph (a)(2)(i)—Non-convertible Senior Debt Securities

Investments in senior debt securities that cannot be converted to any other type of securities would be eligible under the proposed rule. This investment category would include non-convertible U.S. Government agency senior debt securities, including U.S. Treasury securities, and senior non-convertible GSE bonds. Senior debt securities are those securities that have priority of claim over other securities issued. Senior debt securities may be secured by a specific pool of collateral or may be unsecured with priority of claims over other types of debt securities such as subordinated debt, preferred stock, or common equity. To be eligible under this criterion, a senior debt security must not be convertible into a non-senior security or an equity security.[18]

Currently authorized investments such as municipal securities and corporate debt securities would be eligible under this criterion, as long as they are non-convertible senior debt securities. Other non-convertible senior debt securities would also be eligible under this criterion.

ii. Paragraph (a)(2)(ii)—Money Market Instruments

As under our existing rule, investments in money market instruments would be eligible under the proposed rule. The existing rule lists short-term instruments such as Federal funds, negotiable certificates of deposit, bankers acceptances, commercial paper, non-callable term Federal funds and Eurodollar time deposits, master notes, and repurchase agreements collateralized by eligible investments as money market instruments. The proposed rule's use of the term money market contemplates these instruments as well as other short-term instruments. For an investment to be eligible as a money market instrument, it must have a maturity of 1 year or less.

iii. Paragraph (a)(2)(iii)—Mortgage-Backed Securities and Asset-Backed Securities Guaranteed by U.S. Government Agencies

We propose that MBS and ABS that are fully guaranteed as to the timely payment of principal and interest by a U.S. Government agency would be eligible securities because of their high credit quality. MBS and ABS that are partially guaranteed by a U.S. Government agency would not be eligible under this criterion (although they could be eligible under other criteria). Securities labeled ''government guaranteed'' satisfy this criterion only if they are fully guaranteed as to the timely payment of principal and interest.

iv. Paragraph (a)(2)(iv)—Mortgage-Backed Securities and Asset-Backed Securities Guaranteed by GSEs

Under the proposed rule, MBS and ABS that are fully and explicitly guaranteed as to the timely payment of principal and interest by GSEs would be eligible investments. Farmer Mac MBS would be excluded from eligibility under this provision because they are separately authorized and governed by § 615.5174.

Securities are eligible under this provision only if a GSE fully guarantees the timely payment of both the principal and interest due. A GSE ''wrap'' (guarantee) does not make a security eligible under this provision unless it is a guarantee of all principal and interest. When considering whether to purchase a security with a GSE guarantee or wrap, an institution must ensure that it is fully guaranteed. This provision carries over and clarifies the existing authorities.

v. Paragraph (a)(2)(v)—Senior-Most Positions of Mortgage-Backed Securities and Asset-Backed Securities Not Guaranteed by U.S. Government Agencies or GSEs

In our 2011 proposed rule on investment management,[19] we proposed that a position in a mortgage security that is not guaranteed by a Government agency or Government-sponsored agency would be eligible only if it is the senior-most position at the time of purchase. In that proposed rule, we said that we consider a position in such a mortgage security to be the senior-most position only if it currently meets both of the following criteria:

- No other remaining position in the securitization has priority in liquidation. Remaining positions that are the last to experience losses in the event of default and which share those losses pro rata meet this criterion.
- No other remaining position in the securitization has a higher priority claim to any contractual cash flows. Remaining positions that have the first priority claim to contractual cash flows (including planned amortization classes), as well as those that share on a pro rata basis a first priority claim to cash flows meet this criterion.

In their comments on the 2011 proposed rule, CoBank, ACB, the Farm Credit Bank of Texas, and The Farm Credit Council commented that the market understands the term ''senior-most'' to relate to liquidation preference rather than to the priority of claims to contractual cash flows prior to default. This is because investors, such as System institutions, are concerned with whether they receive a pro rata share of cash flows in the event of depleted credit support or issuer/borrower default, not with whether contractual cash flows are paid first in the ordinary course of business. Institutions are able to successfully and safely invest in securities that are not the first priority with respect to contractual cash flows. These commenters, therefore, asked us to delete the second criterion from our understanding of the term ''senior-most.''[20]

We agree with these comments and eliminate the second criterion. The first criterion set forth above remains.

In addition, as in the existing rule, we propose to retain the requirement that for a position in an MBS to be eligible, the MBS must satisfy the definition of ''mortgage related security'' in 15 U.S.C. 78c(a)(41). We propose to delete the alternative that the MBS could instead comply with 15 U.S.C. 77d(5), because that statutory provision was repealed by the Dodd-Frank Act. We note that commercial MBS are included under this proposed eligibility provision.

Private placements may be eligible under this proposed criterion (or other criteria), as long as they satisfy all of the proposed investment eligibility requirements. Private placement refers to the sale of securities to a relatively small number of sophisticated investors without registration with the Securities and Exchange Commission and, in many cases, without the disclosure of detailed financial information or a prospectus. Even private placements that may be eligible are generally not liquid. Farm Credit banks must be able to identify a permissible purpose for holding a private placement.

[18] Since at least 1993, FCA has stated its belief that it is generally inappropriate for System institutions to maintain ownership interests in commercial enterprises by holding equity securities. *See* 58 FR 63034, 63049–50, Nov. 30, 1993.

[19] 76 FR 51289, Aug. 18, 2011.

[20] Farmer Mac made similar comments in response to the 2011 proposed rule governing Farmer Mac investment management. 76 FR 91798, Nov. 18, 2011.

Our existing eligibility rules limit investments in ABS to those secured by specified assets and with specified weighted average lives. We propose to permit investments in the senior-most position of any ABS, regardless of the secured asset or the weighted average life.[21]

In sum, the proposed rule would permit Farm Credit banks to invest in the senior-most position of any MBS that satisfies the statutory definition of ''mortgage related security'' and the senior-most position of any ABS.

vi. Paragraph (a)(2)(vi)—International and Multilateral Development Bank Obligations

We retain the authority for Farm Credit banks to invest in obligations of international and multilateral development banks, as long as the United States is a voting shareholder.

vii. Paragraph (a)(2)(vii)—Shares of a Diversified Investment Fund

Under the proposal, shares of a diversified investment fund (DIF) would be eligible if the DIF's portfolio consists solely of securities that are eligible under these eligibility criteria or under § 615.5174.[22] The investment company's risk and return objectives and use of derivatives must be consistent with the investment policies of the Farm Credit bank. This DIF eligibility is unchanged from the existing regulation. As discussed below, however, we propose more restrictive portfolio diversification limits on DIF investments than those that currently exist.

c. Paragraph (a)(3)—Obligors' Capacity To Meet Financial Commitment

Existing § 615.5140 imposes credit rating requirements, based on NRSRO credit ratings, to determine the eligibility of investments in a number of asset classes, including municipal securities, certain money market instruments, non-agency mortgage-backed securities, asset-backed securities, and corporate debt securities.[23]

Section 939A of the DFA requires each Federal agency to revise all of its regulations that refer to or require reliance on credit ratings to assess creditworthiness of an instrument to remove the reference or requirement and to substitute other appropriate creditworthiness standards.

We propose to comply with this requirement in a manner consistent with the approach of some of the Federal banking regulatory agencies. The OCC, for example, previously required national banks to determine whether a security was ''investment grade'' in order to determine whether purchasing the security was permissible. Under the previous definition of ''investment grade,'' a security could be characterized as ''investment grade'' if it was rated in the top four ''investment grade'' NRSRO ratings.

In its revised regulations to comply with the DFA requirement, the OCC retained the term ''investment grade'' but eliminated the rating standard. Instead, it defined the term to mean ''the issuer of a security has an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure.''

The OCC stated that it did not intend for the elimination of references to credit ratings to change substantively the standards national banks must follow when deciding whether a security is investment grade. Its new rule permits a national bank to consider credit ratings as part of its ''investment grade'' determination and due diligence, but the credit rating must be supplemented by the bank's own analysis. And the new rule does not require a national bank to use NRSRO credit ratings to make the ''investment grade'' determination.[24]

The OCC previously permitted national banks to invest in securities that were rated in one of the top four ratings. The OCC intends that its new definition—the issuer of a security has an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure—is substantively unchanged from its previous standards.

Except for investments in a few asset classes such as U.S. Government agency and GSE obligations, as discussed above, FCA's existing regulations require that in order to be eligible, investments must meet the highest or the second highest NRSRO rating, depending on the asset class. We want to retain high creditworthiness standards for Farm Credit bank investments. Accordingly, we propose to require that for an investment to be eligible for Farm Credit banks, at least one obligor (whether debtor or guarantor) must have very strong capacity to meet its financial commitment for the expected life of the investment. Obligors that exhibit very strong capacity to meet financial commitments generally have very low probability of default. This standard would apply to all investments, including those that are currently not subject to a credit rating requirement.

Like the OCC's regulations, our proposal permits but does not require Farm Credit banks to consider credit ratings. If a Farm Credit bank does consider credit ratings, it must still conduct its own due diligence to determine whether an investment satisfies this standard. An investment does not automatically satisfy this standard by virtue of its credit rating.

We propose an additional standard for investments if a Farm Credit bank is relying upon the capacity of a non-U.S. obligor to meet the ''very strong capacity'' standard. Unless such an investment is fully guaranteed as to the timely payment of principal and interest by a U.S. Government agency, the sovereign host country of the obligor whose capacity is being relied upon must have the highest Country Risk Classification (CRC) (a 0 or a 1) as published by the OECD or must be an OECD member that is unrated. If the Farm Credit bank is not relying upon the capacity of a non-U.S. obligor to satisfy the ''very strong capacity'' standard, then the proposal establishes no requirements regarding that obligor's sovereign host country.

The OECD's CRCs are an assessment of a country's credit risk, used to set interest rate charges for transactions covered by the OECD arrangement on export credits. The OECD uses a scale of 0 to 7 with 0 being the lowest possible risk and 7 being the highest possible risk. Furthermore, the OECD no longer assigns CRCs to certain high income countries that are members of the OECD and that have previously received a CRC of 0.[25] OECD member countries that are no longer assigned a CRC exhibit a similar degree of country risk as that of a jurisdiction with a CRC of 0.

In their capital rules to implement Basel III, the Federal banking regulators adopted provisions basing risk weights for sovereign exposures on OECD CRCs (and on OECD membership, for

[21] Both existing and proposed § 615.5133(c) require the investment policies of each institution to establish risk limits for different types of investments based on all relevant factors, including the institution's objectives, capital position, earnings, and quality and reliability of risk management systems.

[22] Section 615.5174 authorizes Farm Credit banks to purchase and hold MBS that are issued or guaranteed as to both principal and interest by Farmer Mac.

[23] Existing § 615.5140 imposes no credit rating requirements on investments in obligations of U.S. Government agencies, GSEs, and international and multilateral development banks, and in DIFs and certain money market instruments.

[24] 77 FR 35253, June 13, 2012 (OCC rule); 77 FR 35259, June 13, 2012 (OCC guidance). *See also* 77 FR 43151, July 24, 2012 (FDIC rule); 77 FR 43155, July 24, 2012 (FDIC guidance).

[25] *See http://www.oecd.org/tad/xcred/cat0.htm.*

countries without a CRC).[26] Like these other regulators, we believe that use of CRCs in this manner is permissible under section 939A of the Dodd-Frank Act and that section 939A was not intended to apply to assessments of creditworthiness of organizations such as the OECD. As discussed in those rules, section 939A was targeted at addressing the role, and the conflicts of interest, of commercial credit rating agencies that provide government-sanctioned credit ratings to their fee-paying clients. The OECD is not a commercial entity that produces credit assessments for fee-paying clients, nor does it provide the sort of evaluative and analytical services as credit rating agencies. Additionally, we propose to use CRCs only for this limited purpose.

d. Paragraph (a)(4)—Credit and Other Risk in the Investment

In addition to imposing standards on obligors, we also propose to require that for an investment to be eligible, it must itself exhibit low credit risk and other risk characteristics consistent with the purposes for which it is held. The other risks that institutions must consider include, but are not limited to, those listed in § 615.5133(c).

We believe that all investments held by Farm Credit banks must have low credit risk. We do not propose to require that other risks in the investment be low in all cases. Instead, the risk characteristics in the investment must be consistent with the purposes for which the investment is held. Accordingly, Farm Credit banks must understand the purpose for which they purchase and hold an investment.

For instance, if an investment is held for the purpose of liquidity, it would have to be marketable or liquid[27] and would generally have to have low price volatility. On the other hand, an investment that is high quality but has high price volatility and questionable marketability or liquidity would not be appropriate for a liquidity investment, but it might be used effectively to manage interest rate risk, which is a permissible purpose for Farm Credit banks under § 615.5132(a). Farm Credit banks must also consider whether other risks are consistent with the purpose for which an investment is held.

e. Paragraph (a)(5)—Denomination

As in our existing rule, the denomination of all investments must be in U.S. dollars. We propose no change from our existing rule.

2. Paragraph (b)—Investments That Do Not Satisfy Requirements

We propose technical revisions to the regulatory provision authorizing institutions to hold other investments with FCA's prior approval. We intend no substantive change with these revisions.

3. Paragraph (c)—Ineligible Investments

We propose to prohibit Farm Credit banks from purchasing CDOs, as that term is defined in § 615.5131. Based on the experience of CDO investors during the recent financial crisis, we believe investments in CDOs pose unacceptable risk to System institutions.

4. Paragraph (d)—Reservation of Authority

We propose to make explicit our authority, on a case-by-case basis, to determine that a particular investment imposes inappropriate risk, notwithstanding that it satisfies the investment eligibility criteria. The proposal also provides that FCA will notify a Farm Credit bank as to the proper treatment of any such investment.

5. Application of Investment Eligibility Criteria to Existing Farm Credit Bank Investments

As discussed below, the FCA is contemplating that Farm Credit banks would have to comply with the rule's requirements pertaining to their own investments 6 months after the effective date of the rule. New Farm Credit bank investments made after that compliance date would be subject to the investment eligibility criteria in § 615.5140(a).

Existing Farm Credit bank investments (investments made before the compliance date) that were not eligible under the investment eligibility criteria that were in effect at the time of purchase (or that the FCA did not approve) would continue to be subject to the requirements of § 615.5143(a), which governs the treatment of investments that are ineligible when purchased.

Existing Farm Credit bank investments (investments made before the compliance date) that were eligible under the investment eligibility criteria that were in effect at the time of purchase but that are ineligible under the revised § 615.5140(a) investment eligibility criteria would be treated as follows, unless the FCA specified different treatment. If an investment is not eligible because it does not satisfy the criteria in revised § 615.5140(a)(2)—that is, it is a type of investment that was eligible under the previous criteria but is not eligible under the revised criteria—the Farm Credit bank may continue to hold the investment with no restriction. If an investment is not eligible because it does not satisfy the criteria in revised § 615.5140(a)(1), (a)(3), or (a)(4)—which pertain to permissible investment purposes and to credit quality—the Farm Credit bank may continue to hold the investment subject to § 615.5143(b), which governs the treatment of investments that were eligible to purchase but that no longer satisfy the eligibility criteria.

We remind the Farm Credit banks that under § 615.5143(c), the FCA would retain the authority to require divestiture of any investment at any time for failure to comply with § 615.5132(a) or for safety and soundness reasons.

D. Section 615.5133—Investment Management

1. *Overview*

Existing § 615.5133 applies to all System institutions—Farm Credit banks, associations, and service corporations. Most of proposed revised § 615.5133 would also apply to all System institutions. However, as discussed in greater detail below, proposed § 615.5133(f) and (g), which govern portfolio diversification requirements and obligor limits, would apply only to Farm Credit banks. Additionally, we propose to modify § 615.5133(c), which addresses risk tolerance in investment policies, so it clearly distinguishes how liquidity is managed at Farm Credit banks from its treatment at associations. The investment management provisions of proposed § 615.5133 would apply to service corporations to the extent they are appropriate to the size, complexity, and risks of their investments.

2. Appropriate Use of Off-Balance Sheet Derivatives

Off-balance sheet derivatives can be appropriate and useful for the purposes of hedging and risk management. While our regulations do not prohibit a System bank from using off-balance sheet derivatives to build an investment portfolio, use of these derivatives must be consistent with an authorized investment purpose and not be for speculative purposes. We note that such

[26] OCC and the Federal Reserve System, Final Rule, 78 FR 62018, Oct. 11, 2013; FDIC, Interim Final Rule, 78 FR 55340, Sept. 10, 2013, substantively adopted as final at 79 FR 20754, April 14, 2014.

[27] Under § 615.5134(d), investments used to satisfy the liquidity reserve requirement must be ''marketable,'' as defined by that provision. Under § 615.5134(e), investments held in the liquidity buffer must be ''liquid,'' as explained in that provision.

derivatives generally do not provide a significant source of liquidity.

3. Paragraph (a)—Responsibilities of Board of Directors and Paragraph (b)—Investment Policies—General Requirements

The FCA proposes no changes to § 615.5133(a), which governs the responsibilities of the boards of directors of System institutions. We propose only minor stylistic and non-substantive changes to § 615.5133(b), which identifies the general requirements that System institutions must address in their investment policies.

4. Paragraph (c)—Investment Policies—Risk Tolerance

We propose several technical modifications to § 615.5133(c) that would enhance its clarity and provide better guidance to System institutions about compliance with it. For example, we propose a technical change to paragraph (c) to clarify that while operational risk must be addressed in investment policies, the policies do not need to establish quantitative risk limits for operational risk. Quantitative risk limits would continue to be required for the other identified risks—credit, market, and liquidity.

We propose to split the requirements regarding credit quality standards and concentration risk in existing paragraph (c)(1)(i) into two paragraphs. We propose to incorporate the existing general requirements regarding risk diversification standards and counterparty (obligor) risk limits into more specific requirements contained in proposed paragraphs (f) and (g). We propose these revisions in order to clarify our requirements in this area and ensure that institutions are considering risk appropriately.

Proposed paragraph (c)(1)(i) would address credit quality standards. It would require that an institution's investment policies establish credit quality standards for single or related obligors, sponsors, secured and unsecured exposures, and asset classes or obligations with similar characteristics. We propose to add sponsors to the existing requirements because, even though sponsors have no obligation to pay the debt (unless they are also obligors), we are concerned that a sponsor of low credit quality could present risk in a transaction that it initiates. We propose to add secured and unsecured investments to the existing requirements because we believe institutions should consider the differing levels of risk that these investments present.

Proposed paragraph (c)(1)(ii) would address concentration risk. It would require that an institution's investment policies establish concentration limits for single or related obligors, sponsors, geographical areas, industries, unsecured exposures, and asset classes or obligations with similar characteristics. We propose to add sponsors to the existing requirements because we believe undue concentration in a sponsor could present excessive risk. We propose to add unsecured investments to the existing requirements because institutions should carefully consider the amount of unsecured investments they are prepared to hold. Concentration limits should be commensurate with the types and complexity of investments that an institution holds.

We propose to revise § 615.5133(c)(1)(iv), which addresses collateral margin requirements on repurchase agreements. Currently, this provision requires System institutions to regularly mark collateral to market and to ensure that they maintain appropriate control over collateral that they hold. We propose to modify § 615.5133(c)(1)(iv) to clarify that this provision would apply only to System institutions that engage in repurchase agreements.

We propose to revise § 615.5133(c), which governs investment policies pertaining to liquidity, into two separate paragraphs. We propose this revision to take into account the differences in how liquidity is managed at Farm Credit banks from its treatment at associations.

Generally, Farm Credit banks hold liquidity reserves and manage liquidity risks for themselves, their affiliated associations, and certain service corporations. In contrast, System associations are not exposed to the same liquidity risks and they do not manage liquidity in the same way as their funding banks because their only substantial liability is their debt obligation to their funding bank.

Existing § 615.5133(c)(3) requires investment policies of all System institutions to describe the liquidity characteristics of eligible investments that the institutions will hold to meet their liquidity needs and other institutional objectives. Under proposed § 615.5133(c)(3)(i), Farm Credit banks would remain subject to this existing requirement. This requirement is appropriate because of the liquidity needs and liquidity risk of Farm Credit banks.

Under proposed § 615.5133(c)(3)(ii), the investment policies of System associations would have to describe the liquid characteristics of their investments. Although System associations do not have the same liquidity needs and liquidity risk as Farm Credit banks do, if they invest their funds in investments authorized by § 615.5142 they must be aware of the liquid characteristics of the assets that they purchase and hold. Proposed conforming changes throughout § 615.5133(c) would require System institutions to consider and address how investment decisions affect their liquidity risk, if and when applicable.

Except for other minor stylistic and technical changes, we propose no other changes to paragraph (c).

5. Paragraph (d)—Delegation of Authority and Paragraph (e)—Internal Controls

We propose no changes to paragraphs (d) and (e).

6. Paragraph (f)—Farm Credit Bank Portfolio Diversification

We propose to add a new paragraph (f) to govern investment portfolio diversification. This paragraph would apply only to Farm Credit banks.

a. Paragraph (f)(1)—Well Diversified Portfolio

Portfolio diversification is a key concept in ensuring the safety and soundness of investors such as Farm Credit banks. We propose requirements to ensure, at a minimum, that the investment portfolios of these institutions do not pose significant risk of loss due to excessive concentrations among asset classes, maturities, industries, geographic areas, and obligors. We also propose exemptions for certain investments from these portfolio diversification requirements. These exemptions would apply where the level of risk from concentration is low.

b. Paragraph (f)(2)—Exemptions

We propose that certain investments would not be subject to our diversification requirements. In this preamble, we refer to investments that are not subject to diversification requirements as ''exempt'' investments. We refer to all other investments as ''covered'' investments, because they are subject to our proposed diversification requirements.

i. Paragraph (f)(2)(i)—Investments Guaranteed by U.S. Government Agencies

Under the proposal, investments that are fully guaranteed as to the timely payment of principal and interest by a U.S. Government agency would be exempt from the proposed

diversification requirements. We propose this exemption because we believe these types of investments are of the highest quality. Our existing rules impose no portfolio diversification requirements on such investments.

ii. Paragraph (f)(2)(ii)—Investments Guaranteed by GSEs

Under the proposal, investments, other than MBS, that are fully and explicitly guaranteed as to the timely payment of principal and interest by a GSE would be exempt from the proposed portfolio diversification requirements. No more than 50 percent of an institution's investment portfolio could be comprised of GSE MBS. These provisions are substantively unchanged from our existing regulations with respect to the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) MBS. Investments in Farmer Mac securities are governed by § 615.5174 and would not be subject to this limitation.

Our 2011 proposed investment management rule had also proposed to retain our 50-percent portfolio limit on Fannie Mae and Freddie Mac MBS. The Farm Credit Council, the Farm Credit Bank of Texas and CoBank, ACB commented in response to that proposal that this limit was too restrictive in light of the safe and liquid nature of these investments (especially since those GSEs were under U.S. Government conservatorship) and the positive yield that those investments provide. They asked us to eliminate portfolio limits for investments in these GSEs. The Council also expressed concern with language in our preamble suggesting that we might consider further restrictions on MBS investments in these GSEs in the future.

We believe no portfolio limits are needed for non-MBS investments in GSEs, such as general obligations. We are concerned, however, about concentration in housing-related investments, and accordingly we propose to retain the 50-percent limit on GSE MBS.[28] We do not contemplate further restrictions on investments in GSE MBS at this time.

c. Paragraph (f)(3)—Investment Portfolio Diversification Requirements

We are proposing investment portfolio diversification requirements for covered investments. Under the proposal, a well-diversified investment portfolio would mean that, at a minimum, covered investments are comprised of different asset classes, maturities, industries, geographic areas, and obligors.

Although we are not proposing specific maturity, industry, or geographic area requirements, the regulation would require each Farm Credit bank to diversify its investments by maturity, industry, and geographic area based on its risk profile.

Covered investments would have to satisfy specified asset class and obligor diversification requirements. These diversification requirements would be calculated based on the entire investment portfolio. This means that both exempt and covered investments would be included in the denominator. The numerator would consist only of those investments that are covered investments for the asset class and obligor diversification requirements. These diversification parameters would be based on the portfolio valued at amortized cost.

We note that these diversification requirements are regulatory maximums; each Farm Credit bank should establish diversification limits that fit its risk profile and that may be more restrictive than regulatory requirements.

Our current regulations impose no investment portfolio limits on investments in DIFs, as long as an institution's shares in each DIF comprise 10 percent or less of its investment portfolio. Otherwise, the portfolio limits for each asset class apply. As discussed below, we now propose different treatment for DIF investments.

i. Paragraph (f)(3)(i)—Asset Class Diversification

We propose to require Farm Credit banks to diversify their investment portfolios among various asset classes; no more than 15 percent of their investment portfolios could be invested in any one asset class.[29] As discussed above, we propose to define an asset class as a group of securities that exhibit similar characteristics and behave similarly in the marketplace.

For purposes of this proposed asset class diversification requirement, we consider MBS to be an asset class. We also consider ABS (excluding MBS) to be an asset class that includes instruments such as student loans and car loans. In addition, we consider money market securities to be an asset class that includes securities such as federal funds and commercial paper. Other asset classes would include municipal securities, corporate bond securities, and any other asset class as determined by the FCA. Each of these asset classes is limited to 15 percent of the investment portfolio of a Farm Credit bank, regardless of the different types of instruments that comprise the asset class.

For purposes of this proposed asset class diversification requirement, we do not consider DIFs to be an asset class, and therefore this requirement would impose no restrictions on the relative amount of DIF investments a Farm Credit bank could hold.[30] The securities within DIFs, however, would be subject to the asset class diversification requirements.

Our existing rule imposes portfolio limits of 15 percent, 20 percent, or 50 percent, depending on the asset class. In our proposed rule in 2011 for banks and associations, we proposed asset class limits for investments that were similar to but generally more restrictive than our existing regulations. To simplify the rule, we are proposing a 15-percent limit for all asset classes.

We believe that diversification of investments is a fundamental part of risk management and that a 15-percent portfolio limit for asset classes is appropriate. Because the vast majority of System investments are in exempt securities, a 15-percent limit on investments in each asset class should provide sufficient flexibility for institutions to manage their investment portfolios.

We seek comment on the reasonableness of this proposed limitation.

ii. Paragraph (f)(3)(ii)—Obligor Diversification

We propose to require Farm Credit banks to diversify their investment portfolios among various obligors; no more than 3 percent of their investment portfolios could be invested in any one obligor.[31] As discussed above, we

[28] Under our recently finalized revisions to our liquidity rule (78 FR 23438, April 18, 2013), it is extremely unlikely that Farm Credit banks could approach 100 percent in GSE MBS.

[29] As discussed above, ''exempt'' investments would not be subject to this asset class diversification requirement, although under proposed § 615.5133(f)(2)(ii), MBS that are fully and explicitly guaranteed by GSEs could only comprise up to 50 percent of the total investment portfolio. Investments in Farmer Mac securities are governed by § 615.5174 and also would not be subject to this requirement.

[30] We believe that the obligor diversification requirements discussed next in this preamble, along with the obligor limit in proposed paragraph (g) of this section, would provide sufficient diversification among DIFs themselves.

[31] As discussed above, ''exempt'' investments would not be subject to this obligor diversification requirement, although under proposed § 615.5133(f)(2)(ii), MBS that are fully and explicitly guaranteed by GSEs could only comprise up to 50 percent of the total investment portfolio. Investments in Farmer Mac securities are governed by § 615.5174 and also would not be subject to this requirement.

propose to define obligor as an issuer, guarantor, or other person or entity who has an obligation to pay a debt, including interest due, by a specified date or when payment is demanded. This definition would include the debtor or immediate party that is obligated to pay a debt, as well as a guarantor of the debt. Under this requirement, a Farm Credit bank must consider both the DIF itself and the entity or entities obligated to pay the underlying debt to be obligors. This requirement would ensure that an institution would not be able to use DIF investments to hold an excessively concentrated investment portfolio.

Our existing regulations contain no portfolio diversification requirements by obligor (although, as discussed below, they do limit the amount of total capital that institutions can invest in a single obligor). We propose this diversification requirement because we believe that concentration among obligors could lead to significant risk.

We believe that this proposal would likely not require changes in the current investment portfolios of Farm Credit banks, although it might have required changes to those portfolios in the past. We believe that this requirement would provide these institutions with sufficient flexibility to manage their investment portfolios while ensuring adequate diversification to further safety and soundness. We seek comment on the reasonableness of this proposed limitation.

7. Paragraph (g)—Farm Credit Bank Obligor Limit

We propose to limit the amount of capital that Farm Credit banks may invest in any one obligor. For Farm Credit banks, the limit would be 10 percent of total capital. This obligor limit would not apply to investments in obligations that are fully guaranteed as to the payment of principal and interest by a U.S. Government agency or fully and explicitly guaranteed as to the payment of principal and interest by a GSE. Under this requirement, a Farm Credit bank must consider both the DIF itself and the entity or entities obligated to pay the underlying debt to be obligors.

Our existing regulations allow Farm Credit banks to invest up to 20 percent of their total capital in eligible investments issued by any single institution, issuer, or obligor; this obligor limit does not apply to obligations, including mortgage securities, that are issued or guaranteed as to interest and principal by the United States, its agencies, instrumentalities, or corporations.

The lower obligor limit that we propose for Farm Credit banks would enhance safety and soundness by ensuring that if an obligor were to default, only a small portion of capital would be at risk. For simplicity, we propose to continue to base the Farm Credit bank investment amount on total capital. As discussed above, however, the FCA Board adopted proposed revisions to our regulatory capital rule on May 8, 2014, and we may revise the basis for the obligor limit to incorporate any revisions to our regulatory capital rule that are adopted in final in the future.[32]

We note that this obligor limit would be a regulatory maximum; each Farm Credit bank should establish obligor limits that fit its overall risk profile and risk-bearing capacity, including earnings capacity, as well as the risks in individual types and classes of investments. For example, more restrictive obligor limits may be warranted on unsecured investments.

We seek comment on whether our proposed 10-percent obligor limit is appropriate. If you believe it is not appropriate, what should the regulatory maximum be, and why?

8. Paragraph (h)—Due Diligence

We propose to redesignate existing paragraph (f) as paragraph (h).

In paragraph (h)(1)(iii), we propose that a System institution must document its assessment of each investment at the time of purchase. While the assessment must be commensurate with the type of each investment, at a minimum the assessment must include an evaluation of the credit risk, liquidity risk as applicable, market risk, interest rate risk, and underlying collateral of the investment.

The nature and degree of due diligence and documentation that is required under this provision to assess eligibility varies based on the risks inherent in different types of securities. For example, institutions should assess securities that they believe are guaranteed by a U.S. Government agency or a GSE to ensure they satisfy our definitions and eligibility requirements for such securities. As another example, institutions do not need to assess the creditworthiness of U.S. Government agency securities, because they exhibit low sovereign default (credit) risk; however, institutions should assess and document all other potential risks associated with these securities. Securities that are not guaranteed by a U.S. Government agency generally present varying degrees of credit risk as well as other types of risk, and the assessment and level of documentation should be sufficient to support the investment decision.

All other changes that we propose to this paragraph are non-substantive.

9. Paragraph (i)—Reports to the Board of Directors

We propose to redesignate existing paragraph (g) as paragraph (i). We also propose to add the word ''risk'' to redesignated § 615.5133(i)(3) so it would require quarterly reports to the board or a designated board committee to address the current composition, quality, and the risk and liquidity profiles of the investment portfolio. This revision would ensure more comprehensive reporting to the board about how the current composition and quality of investments affect the risk and liquidity profile of the bank or association, which would enhance safety and soundness. We propose no other changes to this provision.

E. Section 615.5142—Association Investments

The FCA proposes to revise § 615.5142, which governs association investments. Existing § 615.5142 does not impose a portfolio limit on the total amount of investments that each association is authorized to hold. Additionally, existing § 615.5140 permits associations to hold the same types of investments as Farm Credit banks even though associations are not subject to the liquidity reserve requirement in § 615.5134, and they are not exposed to the same liquidity and market risks as their funding banks. Accordingly, the FCA proposes to revise its regulatory approach to association investments in order to limit the type and amount of investments that an association may hold.

As discussed in more detail below, the proposed rule generally would limit association investments to obligations that are issued or fully guaranteed or insured as to the timely payment of principal and interest by the United States or any of its agencies in an amount that does not exceed 10 percent of its total outstanding loans. The proposed rule also addresses: (1) Core investment and risk management practices at System associations; (2) funding bank supervision of association investments; (3) requests by associations to the FCA to hold other investments; and (4) transition requirements for System associations to come into compliance with the new rule.

[32] The proposed capital rule has not yet been published in the **Federal Register**.

Currently, § 615.5142 authorizes each association to hold eligible investments listed in § 615.5140, with the approval of its funding bank, for the purposes of reducing interest rate risk and managing surplus short-term funds. The existing regulation also requires each Farm Credit bank to review annually the investment portfolio of every association it funds.

Most System associations have increased in size and complexity over the past two decades, offering a diversity of products and services to accommodate a changing and increasingly competitive agricultural sector. The changes in agriculture have introduced new risks to the associations. For example, while the associations have adopted adequate risk management strategies to effectively adapt to this changing environment, they are concentrated in agriculture and have limited ability to manage concentration risk. The associations currently can use investments to manage surplus short-term funds and reduce interest rate risk but cannot use investments to manage concentration risk. The proposed rule strikes a balance by granting associations greater flexibility in the purposes for which they may hold investments, while placing more limits on the amounts and types of investments they may hold. Accordingly, the proposed changes would provide the associations the flexibility to use full faith and credit instruments to manage concentration risk by diversifying assets. We believe the proposed change would help improve association risk management practices and, therefore, strengthen the safety and soundness of the System.

The Farm Credit Act of 1971, as amended, (Farm Credit Act) specifically authorizes System associations to buy and sell obligations of, or insured by, the United States or any agency thereof, and make other investments as may be approved by their respective funding banks under regulations issued by the Farm Credit Administration.[33]

1. Paragraph (a)—Investment Eligibility Criteria

The proposed rule would: (1) Revise the investment purposes for System associations; (2) limit the types of investments that associations may purchase and hold; and (3) impose a cap on the amount of such enumerated investments that each association may hold. Specifically, proposed § 615.5142(a) would authorize each System association, with the approval of its funding bank, to manage risk by purchasing and holding obligations that are issued by, or are fully guaranteed or insured as to the timely payment of principal and interest by, the United States or any of its agencies in an amount that does not exceed 10 percent of its total outstanding loans.

We are proposing to eliminate our requirements in the existing regulation, which authorize associations to hold investments for the purposes of reducing interest rate risks and managing surplus short-term funds, because we believe these requirements are: (1) Too restrictive; and (2) do not provide associations flexibility to manage their risks in today's environment.

As a result of mergers and consolidations, and the evolution of agricultural credit and financial management practices, System associations encounter various risk management environments. A few larger associations now have the capacity to manage interest rate risk separately from their funding banks. For many associations, a small portfolio of high quality investments could help diversify risks they experience as lenders that primarily lend to a single industry—agriculture.

Whereas the existing rule authorizes associations to hold investments for the purposes of reducing interest rate risks and managing surplus short-term funds, the proposed rule authorizes associations to hold investments to manage risks. We invite your comments about whether this proposed rule should identify specific purposes for associations to purchase and hold investments. If you believe that our rule should expressly identify and require specific purposes, please state which ones and why.

Proposed § 615.5142(a) would authorize System associations to invest solely in obligations that are issued, or are fully guaranteed or insured as to the timely payment of principal and interest by the United States or of any of its agencies. Obligations issued, insured, or guaranteed by the United States are expressly mentioned in the provisions of the Act governing association investments. Obligations issued or fully guaranteed or insured as to the timely payment of principal and interest by the United States and its agencies are usually liquid and many are actively traded, although MBS issued by Federal agencies could expose investors to significant market risks.[34] These obligations pose virtually no credit risk to investors because they are backed by the full faith and credit of the United States, although they may expose investors to other risks, especially market risks. For these reasons, obligations issued or fully guaranteed or insured as to the timely payment of principal and interest by the United States and its agencies are suitable for risk management at System associations.

Proposed § 615.5142(a) limits association investments to 10 percent of total outstanding loans. This portfolio limit would ensure that loans to eligible borrowers always constitute the vast majority of System assets, which is consistent with the mission of each association. In this context, the FCA is imposing portfolio limits on investments so that loans to eligible borrowers always constitute a majority of assets at all System banks and associations. Our regulations authorize Farm Credit banks to hold significantly larger investment portfolios than System associations because the: (1) Banks maintain liquidity and manage interest rate risk for all System institutions operating in the district; and (2) associations borrow exclusively from their funding banks.

At the same time, the proposed 10-percent portfolio limit on investments should be sufficient to enable associations to develop robust strategies to manage risks, as long as association investment activities are supported by strong investment policies, management practices and procedures, and appropriate internal controls. Furthermore, the proposed 10-percent limit should help associations manage their concentration risk as single-industry lenders. The policies at some System associations with active investment programs typically establish a 15-percent portfolio limit for investments, while in practice, investments at most associations rarely equal or exceed 10 percent of total outstanding loans. For all these reasons, the FCA believes that the proposed 10-percent portfolio limit on investments strikes an appropriate balance by enabling associations to appropriately manage and diversify risks while continuing to serve their primary mission of funding agriculture and rural America.

We are proposing that the 10-percent limit be computed based upon the 30-day average daily balance of

[33] *See* sections 2.2(10) and (11), and 2.12(17) and (18) of the Act. Additionally, sections 2.2(10) and 2.12(18) of the Act authorize System associations to deposit funds with any member bank of the Federal Reserve System, or with any bank insured by the Federal Deposit Insurance Corporation.

[34] Farmer Mac MBS are covered by § 615.5174, not § 615.5142. Investments in Farmer Mac MBS cannot exceed the total amount of outstanding loans of a System bank or association.

investments divided by loans. Investments would be calculated at amortized cost. Loans would be calculated as defined in § 615.5131, which provides that loans are calculated quarterly (as of the last day of March, June, September, and December) by using the average daily balance of loans during the quarter. For the purpose of this calculation, loans would include accrued interest and not include any allowance for loan loss adjustments. Compliance with the calculation would be measured on the last day of every month.

We also request your comments on whether using the average daily balance of loans during the quarter for computing the limit is adequate to limit any distortions caused by seasonality fluctuations in the amount of total loans.

2. Paragraph (b)—Risk Management Requirements

The following provisions would help to ensure that System associations comply with prudent investment management practices. Therefore, we are proposing to require that each association evaluate its investment management policies, and determine and document how its investment activities are conducted in accordance with the risk management processes and procedures identified in proposed § 615.5142(b)(1), (b)(2), and (b)(3).

3. Paragraph (b)(1)—Compliance With Investment Management Requirements

Proposed § 615.5142(b)(1) would require each association to comply with proposed § 615.5133(a), (b), (c), (d), (e), (h), and (i), which govern investment management practices at all System institutions.[35] From the FCA's perspective, these provisions of proposed § 615.5133 would ensure that System associations always follow prudent investment management practices. Additionally, compliance with these provisions of § 615.5133 would instill discipline in investment management practices at each System association, which protects its safety and soundness. Therefore, we are proposing to require that each association document its compliance with the applicable provisions of § 615.5133.

Under proposed § 615.5142(b)(1), each association's investment management processes must be appropriate for the size, risk characteristics, and complexity of the association and its investment portfolio. These risk management processes must take into account the association's unique circumstances, risk tolerances, and objectives. An association's board would not need to develop an investment policy if it elects not to hold investments authorized under § 615.5142(a).

We are particularly interested in comments on how the FCA can structure the documentation requirements so they do not impose undue regulatory burden on funding banks or associations.

4. Paragraph (b)(2)—Compliance With Interest Rate Risk Management Requirements

Proposed § 615.5142(b)(2) would require any association with significant interest rate risk exposure to comply with §§ 615.5180 and 615.5182. More specifically, § 615.5182 requires any association with interest rate risk that could lead to significant declines in net income or in the market value of capital to comply with § 615.5180, which establishes specific criteria for System banks to follow for managing interest rate risk. Under this regulatory framework, the interest rate risk management program must be commensurate with the level of interest rate risk at the association.

The fiduciary responsibilities of association boards of directors obligate them to develop appropriate investment management policies and practices to manage interest rate risk. Additionally, it is incumbent upon each association's investment managers to fully understand the risks of its investments and make independent and objective evaluations of investments prior to purchase.

Interest rate risk management is an important part of the overall financial management of investments at an association, and includes involvement by both senior management and the association's board of directors. To the extent an association has investments, its board must develop and implement an interest rate risk management program that is tailored to the association's needs and establishes a risk management process that effectively identifies, measures, monitors, and controls interest rate risk.

5. Paragraph (b)(3)—Other Relevant Factors

Proposed § 615.5142(b)(3) would require each association to consider and evaluate other relevant factors that are unique to its circumstances or to the nature of investments that could affect its risk-bearing capacity. Such factors include, but are not limited to, its management experience and capability to understand and manage complex structures and unique risks in the investments it purchases and holds. In this context, the size, risk characteristics, and complexity of the investment portfolio are other relevant factors that could affect an association's risk-bearing capacity when its unique circumstances, risk tolerance, and objectives are taken into account. Associations are authorized to purchase and hold investments only for the purpose of managing risks. Although the FCA does not expect associations to suffer losses or break even on investments, using investments *primarily* for speculative purposes or generating gains from trading is an impermissible activity. Likewise, the intentional mismatched funding of investments and the resulting increase in interest rate risk would typically be inappropriate unless used as an effective hedge against other risks in the balance sheet. Other factors that associations should consider and evaluate include option, premium and call risks of certain investments that they may acquire.

6. Paragraph (c)—Funding Bank Supervision of Association Investments

Sections 2.2(10) and 2.12(18) of the Farm Credit Act require each association to obtain its funding bank's approval of the association's investment activities in accordance with FCA regulations. Accordingly, proposed § 615.5142(c) addresses funding bank review, approval, and oversight of the investment activities of its affiliated associations. As required by statute, each association must request from its funding bank prior approval to buy and hold investments under this section. This proposed provision would not require that an association request approval for each and every investment. Instead, this proposed provision would provide flexibility for each association to choose whether it would prefer to request funding bank approval for each specific investment or instead request approval of a type or class of investments.

7. Paragraph (c)(1)—Funding Bank Review, and Approval or Denial of Association Investments

Proposed § 615.5142(c)(1) would require each funding bank to review and approve or deny requests by its affiliated associations to buy and hold investments. Additionally, the proposed rule would require the bank to explain in writing its reasons for approving or denying the association's request. Once

[35] Proposed § 615.5142(b)(1) would not require System associations to comply with proposed § 615.5133(f) and (g) because those two provisions explicitly apply only to System banks.

an association has established a satisfactory investment management program under § 615.5142(b), which has been approved by its funding bank, the association would be permitted to buy and hold obligations that are issued, or are fully guaranteed or insured as to the timely payment of principal and interest by the United States government or any of its agencies. The intent of this proposed provision is to balance the funding needs of the associations with the funding capacity of the funding bank.

8. Paragraph (c)(2)—Bank Approval Process

As part of the approval process, the funding bank must evaluate, determine and document that the association has: (1) Adequate policies, procedures, internal controls, and accounting and reporting systems for its investments; (2) the capability and expertise to effectively manage risks in investments; and (3) complied with requirements of § 615.5142(b). Any existing System association investment management program previously reviewed and approved by the funding bank would need to be re-reviewed and re-approved if proposed § 615.5142 becomes final and effective.

The intent of this proposed provision is to balance the risk management needs of the associations with the funding and oversight role of the funding bank. A number of satisfactory methods exist for System banks to oversee association investment activities under our regulatory framework. A bank may take an active role in advising and approving an association's investment decisions and strategies. For example, banks may provide research, analytical or advisory services that help associations to manage their investment portfolios.

9. Paragraph (c)(3)—Annual Review of Investment Portfolio

Proposed § 615.5142(c)(3) also retains the existing requirement that each System bank annually review the investment portfolio of every association that it funds. As part of its annual review, the bank must evaluate whether the association's: (1) Investments mitigate and manage its risks; and (2) risk management practices continue to be adequate.

The FCA notes that the General Financing Agreement (GFA) (including any attached, referenced, or related documents) could establish covenants governing the investment activities of an affiliated association. As such, the GFA can be a useful tool for funding banks to review and monitor the investment activities of their affiliated associations.

10. Paragraph (d)—Other Investments Approved by the FCA

Proposed § 615.5142(d) would continue to allow an association to request the FCA's approval to purchase and hold other investments. We note that this provision represents no substantive change from current § 615.5140(e), which allows all System institutions to hold other investments that the FCA approves on a case-by-case basis. Consistent with current practice, the request for our approval must explain the risk characteristics of the investment and the purpose and objectives for making the investment.

These other investments approved by the FCA under proposed § 615.5142(d) would be subject to the portfolio limit on association investments under proposed § 615.5142(a) unless otherwise provided for by the FCA. Furthermore, these other investments could also be subject to specific conditions of approval and subject to other limits on a case-by-case basis.

11. Paragraph (e)(1)—Transition and Divestiture Issues for Association Investments

Under proposed § 615.5142(e)(1), an association would not be required to divest of any investments held on or before the date this rule becomes effective if they were previously authorized under former § 615.5140 or otherwise authorized by official written Agency action that allowed the association to continue to hold such investments. This transition rule would permit an association to continue to hold pre-existing investments that would no longer be authorized if proposed § 615.5142 is adopted as a final rule and becomes effective. However, after this proposed rule is effective, once such investments mature, the association would not be permitted to renew them unless they are authorized pursuant to proposed § 615.5142(a) or (d).

12. Paragraph (e)(2)—Impact on Existing Investments of Subsequent Declines in Total Outstanding Loans

Under proposed § 615.5142(e)(2), an association would not be required to divest of investments purchased on or after the date this proposed rule becomes effective if a subsequent decline in total outstanding loans causes it to exceed the 10-percent portfolio limit in § 615.5142(a).

Accordingly, once an association purchases an eligible investment, it would not be required to dispose of such investment just because of a subsequent decline in total outstanding loans. This provision would help to ensure that an association would not have to divest of a previously purchased asset when loan demand is reduced.

13. Paragraph (e)(3)—Management of Ineligible Investments and Divestiture Under § 615.5143

Proposed § 615.5142(e)(3) would apply to all investments that an association acquires after the new regulation becomes effective. More specifically, all investments that an association purchases after proposed § 615.5142 becomes effective as a final rule would be subject to § 615.5143 of this part, which governs the management and divestiture of ineligible investments. As a result, an association would need to comply with § 615.5143 if any investment acquired after the effective date of this rule did not meet the investment criteria in § 615.5142(a) on or after the date of purchase, if it was not approved by the FCA pursuant to § 615.5142(d), or if it was approved by the FCA pursuant to § 615.5142(d) but later failed to satisfy the conditions of approval.

F. Section 615.5143—Management of Ineligible Investments and Reservation of Authority To Require Divestiture

We propose to revise § 615.5143 to add references to proposed § 615.5142, to reflect that associations are generally governed by the requirements of § 615.5143. In addition, we propose to tailor § 615.5143 to the investment and other authorities of Farm Credit banks as compared to associations. Specifically, we clarify that an association that purchases an ineligible investment would not be subject to the requirements relating to liquidity, collateral, and net collateral, because associations have no regulatory requirements in those areas. In addition, we propose to clarify that no investment is ineligible if it has been approved by the FCA, but an FCA-approved investment would be subject to the requirements of § 615.5143(b) if it no longer satisfied the conditions of approval.

G. Conforming Changes to Other Regulation Sections

We propose conforming changes to references in §§ 611.1153, 611.1155, 615.5174, and 615.5180.

IV. Compliance Date

We recognize that Farm Credit banks may require time to bring their policies and procedures into compliance with the new requirements in the proposed rule. Accordingly, we are contemplating that Farm Credit banks would be

required to comply with the requirements governing their investments 6 months after the effective date of the rule, if it is adopted as final.[36] We invite your comments as to whether this delayed compliance timeframe is appropriate. We also invite your comments on whether a delayed compliance date would be appropriate for associations as well.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, parts 611 and 615 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 611—ORGANIZATION

■ 1. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.2, 1.3, 1.4, 1.5, 1.12, 1.13, 2.0, 2.1, 2.2, 2.10, 2.11, 2.12, 3.0, 3.1, 3.2, 3.3, 3.7, 3.8, 3.9, 3.21, 4.3A, 4.12, 4.12A, 4.15, 4.20, 4.21, 4.25, 4.26, 4.27, 4.28A, 5.9, 5.17, 5.25, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2002, 2011, 2012, 2013, 2020, 2021, 2071, 2072, 2073, 2091, 2092, 2093, 2121, 2122, 2123, 2124, 2128, 2129, 2130, 2142, 2154a, 2183, 2184, 2203, 2208, 2209, 2211, 2212, 2213, 2214, 2243, 2252, 2261, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; sec. 414 of Pub. L. 100–399, 102 Stat. 989, 1004.

§ 611.1153 [Amended]

■ 2. Section 611.1153 is amended by removing in paragraph (i)(1) the reference ''§ 615.5140(e)'' and adding in its place, the reference ''§ 615.5140(b) or § 615.5142(d)''.

§ 611.1155 [Amended]

■ 3. Section 611.1155 is amended by removing in paragraph (a)(1) the reference ''§ 615.5140(e)'' and adding in its place the reference ''§ 615.5140(b) or § 615.5142(d)''.

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

■ 4. The authority citation for part 615 is revised to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a), Pub. L. 100–233, 101 Stat. 1568, 1608; sec. 939A, Pub. L. 111–203, 124 Stat. 1326, 1887 (15 U.S.C. 78o–7 note).

§ 615.5131 [Amended]

■ 5. Section 615.5131 is amended by:

■ a. Removing the definitions for ''eurodollar time deposit'', ''final maturity'', ''general obligations'', ''Government agency'', ''Government-sponsored agency'', ''liquid investments'', ''mortgage securities'', ''Nationally Recognized Statistical Rating Organization (NRSRO)'', ''revenue bond'', and ''weighted average life (WAL)'';

■ b. In the definition of ''asset-backed securities (ABS)'', remove the words ''mortgage securities'' and add in their place, the words ''mortgage-backed securities;''

■ c. Adding in alphabetical order the new definitions for *''Asset class'', ''Collateralized debt obligation (CDO)'', ''Country risk classification (CRC)'', ''Diversified investment fund (DIF)'', ''Government-sponsored enterprise (GSE)'', ''Mortgage-backed securities* (MBS)'', *''Obligor''*, ''Sponsor'', and *''United States (U.S.) Government agency''* to read as follows:

§ 615.5131 Definitions.

* * * * *

Asset class means a group of securities that exhibit similar characteristics and behave similarly in the marketplace. Asset classes include, but are not limited to, money market instruments, municipal securities, corporate bond securities, MBS, ABS (excluding MBS), and any other asset class as determined by the FCA.

Collateralized debt obligation (CDO) means a debt security collateralized by MBS, ABS, or trust-preferred securities.

Country risk classification (CRC) with respect to a sovereign, means the most recent consensus CRC published by the Organization for Economic Cooperation and Development (OECD) as of December 31 of the prior calendar year that provides a view of the likelihood that the sovereign will service its external debt.

Diversified investment fund (DIF) means an investment company registered under section 8 of the Investment Company Act of 1940.

Government-sponsored enterprise (GSE) means an entity established or chartered by the United States Government to serve public purposes specified by the United States Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States Government.

* * * * *

Mortgage-backed securities (MBS) means securities that are either:

(1) Pass-through securities or participation certificates that represent ownership of a fractional undivided interest in a specified pool of residential (excluding home equity loans), multifamily or commercial mortgages, or

(2) A multiclass security (including collateralized mortgage obligations and real estate mortgage investment conduits) that is backed by a pool of residential, multifamily or commercial real estate mortgages, pass through MBS, or other multiclass MBS.

Obligor means an issuer, guarantor, or other person or entity who has an obligation to pay a debt, including interest due, by a specified date or when payment is demanded.

Sponsor means a person or entity that initiates a transaction by selling or pledging to a specially created issuing entity, such as a trust, a group of financial assets that the sponsor either has originated itself or has purchased.

United States (U.S.) Government agency means an instrumentality of the U.S. Government whose obligations are fully guaranteed as to the timely payment of principal and interest by the full faith and credit of the U.S. Government.

* * * * *

■ 6. Section 615.5133 is revised to read as follows:

§ 615.5133 Investment management.

(a) *Responsibilities of board of directors.* Your board of directors must adopt written policies for managing

[36] Farm Credit bank compliance with requirements pertaining to their supervision of association investments would be required at the time associations are required to comply with this rule.

your investment activities. Your board must also ensure that management complies with these policies and that appropriate internal controls are in place to prevent loss. At least annually, the board, or a designated committee of the board, must review the sufficiency of these investment policies. Any changes to the policies must be adopted by the board and be documented.

(b) *Investment policies—general requirements.* Your board's written investment policies must address the purposes and objectives of investments; risk tolerance; delegations of authority; internal controls; due diligence; and reporting requirements. Your investment policies must fully address the extent of pre-purchase analysis that management must perform for various classes of investments. Your investment policies must also address the means for reporting, and approvals needed for, exceptions to established policies. If you are a Farm Credit bank, your investment policies must address portfolio diversification and obligor limits under paragraphs (f) and (g) of this section. Investment policies must be sufficiently detailed, consistent with, and appropriate for the amounts, types, and risk characteristics of your investments.

(c) *Investment policies—risk tolerance.* Your investment policies must establish risk limits for eligible investments and for the entire investment portfolio. Your investment policies must include concentration limits to ensure prudent diversification of credit, market, and, as applicable, liquidity risks in the investment portfolio. Risk limits must be based on all relevant factors, including your institutional objectives, capital position, earnings, and quality and reliability of risk management systems and must take into consideration the interest rate risk management program required by § 615.5180 or § 615.5182, as applicable. Your investment policies must identify the types and quantity of investments that you will hold to achieve your objectives and control credit risk, market risk, and liquidity risk as applicable. Each association or service corporation that holds significant investments and each Farm Credit bank must establish risk limits in its investment policies, as applicable, for the following types of risk:

(1) *Credit risk.* Investment policies must establish:

(i) *Credit quality standards.* Credit quality standards must be established for single or related obligors, sponsors, secured and unsecured exposures, and asset classes or obligations with similar characteristics.

(ii) *Concentration limits.* Concentration limits must be established for single or related obligors, sponsors, geographical areas, industries, unsecured exposures, and asset classes or obligations with similar characteristics.

(iii) *Criteria for selecting brokers, dealers, and investment bankers (collectively, securities firms).* You must buy and sell eligible investments with more than one securities firm. As part of your review of your investment policies required under paragraph (a) of this section, your board of directors, or a designated committee of the board, must review the criteria for selecting securities firms. Any changes to the criteria must be approved by the board.

(iv) *Collateral margin requirements on repurchase agreements.* To the extent you engage in repurchase agreements, you must regularly mark the collateral to market and ensure appropriate controls are maintained over collateral held.

(2) *Market risk.* Investment policies must set market risk limits for specific types of investments and for the investment portfolio.

(3) *Liquidity.*

(i) *Liquidity risk at Farm Credit banks.* Investment policies must describe the liquidity characteristics of eligible investments that you will hold to meet your liquidity needs and other institutional objectives.

(ii) *Liquidity at associations.* Investment policies must describe the liquid characteristics of eligible investments that you will hold.

(4) *Operational risk.* Investment policies must address operational risks, including delegations of authority and internal controls in accordance with paragraphs (d) and (e) of this section.

(d) *Delegation of authority.* All delegations of authority to specified personnel or committees must state the extent of management's authority and responsibilities for investments.

(e) *Internal controls.* You must:

(1) Establish appropriate internal controls to detect and prevent loss, fraud, embezzlement, conflicts of interest, and unauthorized investments.

(2) Establish and maintain a separation of duties between personnel who supervise or execute investment transactions and personnel who supervise or engage in all other investment-related functions.

(3) Maintain records and management information systems that are appropriate for the level and complexity of your investment activities.

(4) Implement an effective internal audit program to review, at least annually, your investment management function, controls, processes, and compliance with FCA regulations. The scope of the annual review must be appropriate for the size, risk and complexity of the investment portfolio.

(f) *Farm Credit bank portfolio diversification.*

(1) *Well-diversified portfolio.* Subject to the exemptions set forth in paragraph (f)(2) of this section, a Farm Credit bank must maintain a well-diversified investment portfolio as set forth in paragraph (f)(3) of this section.

(2) *Exemptions from investment portfolio diversification requirements.* The following investments are not subject to the investment portfolio diversification requirements specified in paragraph (f)(3) of this section:

(i) Investments that are fully guaranteed as to the timely payment of principal and interest by a U.S. Government agency; and

(ii) Investments that are fully and explicitly guaranteed as to the timely payment of principal and interest by a GSE, except that no more than 50 percent of the investment portfolio may be comprised of GSE MBS. Investments in Farmer Mac securities are governed by § 615.5174 and are not subject to this limitation.

(3) *Investment portfolio diversification requirements.* A well-diversified investment portfolio means that, at a minimum, investments are comprised of different asset classes, maturities, industries, geographic areas, and obligors. These diversification requirements apply to each individual security that a Farm Credit bank holds within a DIF. To satisfy the asset class and obligor diversification requirements, a Farm Credit bank must, at a minimum, comply with the following requirements, except as exempted by paragraph (f)(2) of this section. These diversification parameters must be based on the portfolio valued at amortized cost.

(i) *Asset class diversification.* The investment portfolio must be diversified among various asset classes. No more than 15 percent of the investment portfolio may be invested in any one asset class. Securities within each DIF count toward the appropriate asset class.

(ii) *Obligor diversification.* The investment portfolio must be diversified among various obligors. No more than 3 percent of the investment portfolio may be invested in any one obligor. For a DIF, both the DIF itself and the entities obligated to pay the underlying debt are obligors.

(g) *Farm Credit bank obligor limit.* No more than 10 percent of a Farm Credit bank's total capital may be invested in

any one obligor. This obligor limit does not apply to investments in obligations that are fully guaranteed as to the timely payment of principal and interest by U.S. Government agencies or fully and explicitly guaranteed as to the timely payment of principal and interest by GSEs. For a DIF, both the DIF itself and the entities obligated to pay the underlying debt are obligors.

(h) *Due diligence.*

(1) *Pre-purchase analysis.*

(i) *Eligibility and compliance with investment policies.* Before you purchase an investment, you must conduct sufficient due diligence to determine whether it is eligible under § 615.5140 or § 615.5142, as applicable, and complies with your board's investment policies. You must document your assessment and the information used in your assessment. You may hold an investment that does not comply with your investment policies only with the prior approval of your board.

(ii) *Valuation.* Prior to purchase, you must verify the value of the investment (unless it is a new issue) with a source that is independent of the broker, dealer, counterparty or other intermediary to the transaction.

(iii) *Risk assessment.* Your assessment of each investment at the time of purchase must at a minimum include an evaluation of the credit risk, liquidity risk as applicable, market risk, interest rate risk, and underlying collateral of the investment, as applicable. This assessment must be documented and commensurate with the complexity and type of the investment. You must perform stress testing on any investment that is structured or that has uncertain cash flows, including all MBS and ABS, before you purchase it. The stress test must be commensurate with the type and complexity of the investment and must enable you to determine that the investment does not expose your capital, earnings, or liquidity, if applicable, to risks that are greater than those specified in your investment policies. The stress testing must comply with the requirements in paragraph (h)(4)(ii) of this section.

(2) *Ongoing value determination.* At least monthly, you must determine the fair market value of each investment in your portfolio and the fair market value of your whole investment portfolio.

(3) *Ongoing analysis of credit risk.* You must establish and maintain processes to monitor and evaluate changes in the credit quality of each investment in your portfolio and in your whole investment portfolio on an ongoing basis.

(4) *Quarterly stress testing.*

(i) You must stress test your entire investment portfolio, including stress tests of all investments individually and stress tests of the portfolio as a whole, at the end of each quarter. The stress tests must enable you to determine that your investment securities, both individually and on a portfolio-wide basis, do not expose your capital, earnings, or liquidity, if applicable, to risks that exceed the risk tolerance specified in your investment policies. If your portfolio risk exceeds your investment policy limits, you must develop a plan to comply with those limits.

(ii) Your stress tests must be defined in a board-approved policy and must include defined parameters for the types of securities you purchase. The stress tests must be comprehensive and appropriate for the risk profile of your institution. At a minimum, the stress tests must be able to measure the price sensitivity of investments over a range of possible interest rate/yield curve scenarios. The methodology that you use to analyze investment securities must be appropriate for the complexity, structure, and cash flows of the investments in your portfolio. You must rely to the maximum extent practicable on verifiable information to support all your assumptions, including prepayment and interest rate volatility assumptions, when you apply your stress tests. You must document the basis for all assumptions that you use to evaluate the security and its underlying collateral. You must also document all subsequent changes in your assumptions.

(5) *Presale value verification.* Before you sell an investment, you must verify its value with a source that is independent of the broker, dealer, counterparty, or other intermediary to the transaction.

(i) *Reports to the board of directors.*

At least quarterly, your management must report on the following to your board of directors or a designated board committee:

(1) Plans and strategies for achieving the board's objectives for the investment portfolio;

(2) Whether the investment portfolio effectively achieves the board's objectives;

(3) The current composition, quality, and the risk and liquidity profiles of the investment portfolio;

(4) The performance of each class of investments and the entire investment portfolio, including all gains and losses realized during the quarter on individual investments that you sold before maturity and why they were liquidated;

(5) Potential risk exposure to changes in market interest rates as identified through quarterly stress testing and any other factors that may affect the value of your investment holdings;

(6) How investments affect your capital, earnings, and overall financial condition;

(7) Any deviations from the board's policies (must be specifically identified);

(8) The status and performance of each investment described in § 615.5143(a) and (b) or that does not comply with your investment policies; including the expected effect of these investments on your capital, earnings, liquidity, as applicable, and collateral position; and

(9) The terms and status of any required divestiture plan or risk reduction plan.

■ 7. In § 615.5134 paragraph (b) is amended by revising the table to read as follows:

§ 615.5134 Liquidity reserve.

* * * * *

(b) *Liquidity reserve requirement.*

* * * * *

Liquidity level	Instruments	Discount (multiply by)
Level 1	• Cash, including cash due from traded but not yet settled debt	100 percent.
	• Overnight money market investments	100 percent.
	• Obligations of U.S. Government agencies with a final remaining maturity of 3 years or less.	97 percent.
	• GSE senior debt securities that mature within 60 days, excluding securities issued by the Farm Credit System.	95 percent.
	• Diversified investment funds comprised exclusively of Level 1 instruments ...	95 percent.

Liquidity level	Instruments	Discount (multiply by)
Level 2	• Additional Level 1 investments	Discount for each Level 1 investment applies.
	• Obligations of U.S. Government agencies with a final remaining maturity of more than 3 years.	97 percent.
	• MBS that are fully guaranteed by a U.S. Government agency as to the timely repayment of principal and interest.	95 percent.
	• Diversified investment funds comprised exclusively of Levels 1 and 2 instruments.	95 percent.
Level 3	• Additional Level 1 or Level 2 investments	Discount for each Level 1 or Level 2 investment applies.
	• GSE senior debt securities with maturities exceeding 60 days, excluding senior debt securities of the Farm Credit System.	93 percent for all instruments in Level 3.
	• MBS that are fully guaranteed by a GSE as to the timely repayment of principal and interest.	
	• Money market instruments maturing within 90 days.	
	• Diversified investment funds comprised exclusively of levels 1, 2, and 3 instruments.	

* * * * *

■ 8. Section 615.5140 is revised to read as follows:

§ 615.5140 Eligible investments for Farm Credit banks.

(a) *Investment eligibility criteria.* A Farm Credit bank may purchase an investment only if it satisfies the following investment eligibility criteria:

(1) The investment must be purchased and held for one or more investment purposes authorized in § 615.5132.

(2) The investment must be one of the following:

(i) A non-convertible senior debt security;

(ii) A money market instrument with a maturity of 1 year or less;

(iii) A portion of an MBS or ABS that is fully guaranteed as to the timely payment of principal and interest by a U. S. Government agency;

(iv) A portion of an MBS or ABS that is fully and explicitly guaranteed as to the timely payment of principal and interest by a GSE, except a security permitted under § 615.5174 of this part;

(v) The senior-most position of an MBS or ABS that is not fully guaranteed as to the timely payment of principal and interest by a U.S. Government agency or fully and explicitly guaranteed as to the timely payment of principal and interest by a GSE, provided that the MBS satisfies the definition of ''mortgage related security'' in 15 U.S.C. 78c(a)(41);

(vi) An obligation of an international or multilateral development bank in which the U.S. is a voting member; or

(vii) Shares of a diversified investment fund, if its portfolio consists solely of securities that satisfy paragraphs (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(2)(iv), (a)(2)(v), or (a)(2)(vi) of this section or that are eligible under § 615.5174. The investment company's risk and return objectives and use of derivatives must be consistent with the Farm Credit bank's investment policies.

(3) At least one obligor of the investment must have very strong capacity to meet its financial commitment for the expected life of the investment. If any obligor whose capacity to meet its financial commitment is being relied upon to satisfy this requirement is located outside the U.S., either:

(i) That obligor's sovereign host country must have the highest or second-highest consensus Country Risk Classification (0 or 1) as published by the Organization for Economic Cooperation and Development (OECD) or be an OECD member that is unrated, or

(ii) The investment must be fully guaranteed as to the timely payment of principal and interest by a U.S. Government agency.

(4) The investment must exhibit low credit risk and other risk characteristics consistent with the purpose or purposes for which it is held.

(5) The investment must be denominated in U.S. dollars.

(b) *Investments that do not satisfy requirements.* Farm Credit banks may request our approval to purchase and hold other investments that do not satisfy the requirements of this section. Farm Credit banks may purchase and hold such investments as approved. A Farm Credit bank's request for our approval must explain the risk characteristics of the investment and the purpose and objectives for making the investment.

(c) *Ineligible investments.* Notwithstanding any other provision of this section, Farm Credit banks may not purchase CDOs without approval under paragraph (b) of this section.

(d) *Reservation of authority.* FCA may, on a case-by-case basis, determine that a particular investment of a Farm Credit bank poses inappropriate risk, notwithstanding that it satisfies the investment eligibility criteria. If so, we will notify the Farm Credit bank as to the proper treatment of the investment.

■ 9. Section 615.5142 is revised to read as follows:

§ 615.5142 Eligible investments for System associations.

(a) Subject to the conditions, restrictions and limits set forth in this section, each Farm Credit System association, with the approval of its funding bank, may only purchase and hold investments to manage risk. Each System association that purchases investments must identify and evaluate how investments contribute to the management of its risks. Each investment purchased must be an obligation issued, or fully guaranteed or insured as to the timely payment of principal and interest, by the United States or its agencies and the total amount of investments held must not exceed 10 percent of the association's total outstanding loans. In computing the 10-percent limit for association investments, the 30-day average daily balance of investments is divided by loans. Investments are calculated at amortized cost. Loans are calculated as defined in § 615.5131. For the purpose of this calculation, loans include accrued interest and do not include any allowance for loan loss adjustments. Compliance with the calculation is measured on the last day of every month.

(b) *Risk management requirements.* Each System association that purchases investments must evaluate its investment management policies, and

determine and document how its investment activities are conducted in accordance with the following risk management processes and procedures:

(1) *Investment management requirements.* Each association that purchases investments must comply with § 615.5133(a), (b), (c), (d), (e), (h) and (i) of this part. These investment management processes must be appropriate for the size, risk and complexity of the association's investment portfolio.

(2) *Interest rate risk management requirements.* If interest rate risk in investments could lead to significant declines in net income or in the market value of capital, the association must comply with §§ 615.5180 and 615.5182.

(3) *Other relevant risk management factors.* Each association that purchases investments must consider and evaluate any other relevant factors unique to the association or to the nature of the investments that could affect such association's risk-bearing capacity, including but not limited to management experience and capability to understand and manage complex structures and unique risks in investments purchased.

(c) *Funding bank supervision of association investments.*

(1) An association must not purchase and hold an investment without the prior approval of its funding bank. The bank must review each affiliated association's request to buy and hold investments and explain in writing the bank's reasons for approving or denying the request.

(2) In deciding whether or not to approve an association's request to buy and hold investments, the bank must evaluate, and document that the association:

(i) Has adequate policies, procedures, internal controls, and accounting and reporting systems for its investments;

(ii) Has the capability and expertise to effectively manage the risks in investments; and

(iii) Complies with paragraph (b) of this section.

(3) The bank must review annually the investment portfolio of every association that it funds. This annual review must evaluate whether the association's investments mitigate and manage risk over time, and the continued adequacy of the associations' risk management practices.

(d) *Other investments approved by the FCA.* An association may purchase and hold other investments that we approve. The request for our approval must explain the risk characteristics of the investment and the purpose and objectives for making the investment. These other investments are subject to the funding bank's approval and if approved by the FCA are subject to the portfolio limit on association investments in paragraph (a) of this section unless otherwise provided for by the FCA.

(e) *Transition and divestiture for association investments.*

(1) No association is required to divest any investments held on the date this rule becomes effective that were previously authorized under former § 615.5140 or otherwise authorized by official written FCA action that allowed the association to continue to hold such investments. Once such investments mature, the association must not renew them unless they are authorized pursuant to paragraphs (a) or (d) of this section.

(2) An association is not required to divest of investments if a decline in total outstanding loans causes it to exceed the portfolio limit in paragraph (a) of this section. However, the association must not purchase new investments unless after they are purchased, the total amount of investments held falls within the portfolio limit in paragraph (a) of this section.

(3) Section 615.5143 of this part applies to investments that an association acquires after the date that this rule becomes effective, if such investments:

(i) Do not comply with the investment criteria in paragraph (a) of this section on or after the date of purchase;

(ii) Have not been approved by the FCA pursuant to paragraph (d) of this section; or

(iii) Were approved by the FCA pursuant to paragraph (d) of this section but no longer satisfy the conditions of approval.

■ 10. Section 615.5143 is revised to read as follows:

§ 615.5143 Management of ineligible investments and reservation of authority to require divestiture.

(a) *Investments ineligible when purchased.* Investments that do not satisfy the eligibility criteria set forth in § 615.5140(a) or the investment criteria set forth in § 615.5142(a) or that have not been approved by the FCA pursuant to § 615.5140(b) or § 615.5142(d), as applicable, at the time of purchase are ineligible. You must not purchase ineligible investments. If you determine that you have purchased an ineligible investment, you must notify us within 15 calendar days after the determination. You must divest of the investment no later than 60 calendar days after you determine that the investment is ineligible unless we approve, in writing, a plan that authorizes you to divest the investment over a longer period of time. Until you divest of the investment:

(1) If you are a Farm Credit bank, it must not be used to satisfy your liquidity requirement(s) under § 615.5134;

(2) It must continue to be included in the § 615.5132 Farm Credit bank investment portfolio limit calculation or in the § 615.5142(a) association portfolio limit, as applicable; and

(3) If you are a Farm Credit bank, it must be excluded as collateral under § 615.5050 and net collateral under § 615.5301(c).

(b) *Investments that no longer satisfy investment eligibility criteria.* If you determine that an investment (that satisfied the eligibility criteria set forth in § 615.5140(a) or the investment criteria set forth in § 615.5142(a), as applicable, when purchased) no longer satisfies the criteria, or that an investment that the FCA approved pursuant to § 615.5140(b) or § 615.5142(d), as applicable, no longer satisfies the conditions of approval, you may continue to hold the investment, subject to the following requirements:

(1) You must notify us within 15 calendar days after such determination;

(2) If you are a Farm Credit bank, you must not use the investment to satisfy your liquidity requirement(s) under § 615.5134;

(3) You must continue to include the investment in the § 615.5132 Farm Credit bank investment portfolio limit calculation or in the § 615.5142(a) association portfolio limit, as applicable;

(4) If you are a Farm Credit bank, you may continue to include the investment as collateral under § 615.5050 and net collateral under § 615.5301(c) at the lower of cost or market value; and

(5) You must develop a plan to reduce the investment's risk to you.

(c) *Reservation of authority.* FCA retains the authority to require you to divest of any investment at any time for failure to comply with § 615.5132(a) or § 615.5142 or for safety and soundness reasons. The timeframe set by FCA will consider the expected loss on the transaction (or transactions) and the effect on your financial condition and performance.

§ 615.5174 [Amended]

■ 11. Section 615.5174 paragraph (d) is amended by removing the reference ''§ 615.5133(f)(1)(iii) and § 615.5133(f)(4)'' and adding in its place, ''§ 615.5133(h)(1)(iii) and § 615.5133(h)(4)''.

§ 615.5180 [Amended]

■ 12. Section 615.5180 paragraph (c)(3) is amended by removing the reference ''§ 615.5133(f)(4)'' and adding in its place, the reference ''§ 615.5133(h)(4)''.

Dated: July 21, 2014.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2014–17493 Filed 7–24–14; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2014–0383; Notice No. 25–14–05–SC]

Special Conditions: Bombardier Aerospace, Models BD–500–1A10 and BD–500–1A11 Series Airplanes; Alternate Fuel Tank Structural Lightning Protection Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Bombardier Aerospace Models BD–500–1A10 and BD–500–1A11 series airplanes. These airplanes will have a novel or unusual design feature that will incorporate a nitrogen generation system (NGS) for all fuel tanks that actively reduce flammability exposure within the fuel tanks significantly below that required by the fuel tank flammability regulations. Among other benefits, the NGS significantly reduces the potential for fuel vapor ignition caused by lightning strikes. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before September 8, 2014.

ADDRESSES: Send comments identified by docket number FAA–2014–0383 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC, 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/*, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Margaret Langsted, FAA, Propulsion and Mechanical Systems Branch, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone 425–227–2677; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive on or before the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On December 10, 2009, Bombardier Aerospace applied for a type certificate for their new Models BD–500–1A10 and BD–500–1A11 series airplanes (hereafter collectively referred to as ''CSeries''). The CSeries airplanes are swept-wing monoplanes with a composite wing fuel tank structure and an aluminum alloy fuselage sized for 5-abreast seating. Passenger capacity is designated as 110 for the Model BD–500–1A10 and 125 for the Model BD–500–1A11. Maximum takeoff weight is 131,000 pounds for the Model BD–500–1A10 and 144,000 pounds for the Model BD–500–1A11.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Bombardier Aerospace must show that the CSeries airplanes meet the applicable provisions of part 25 as amended by Amendments 25–1 through 25–129.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the CSeries airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the CSeries airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy under section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17.

Novel or Unusual Design Features

The CSeries airplanes will incorporate the following novel or unusual design features: A fuel tank nitrogen generation system (NGS) that is intended to control fuel tank flammability for all fuel tanks. This NGS is designed to provide a level of performance that applies the more stringent standard for warm day flammability performance applicable to normally emptied tanks within the fuselage contour from § 25.981(b) and appendix M to part 25 to all fuel tanks of the CSeries airplanes. This high level of NGS performance for all fuel tanks is

a novel or unusual design feature compared to the state of technology envisioned in the airworthiness standards for transport category airplanes.

Discussion

The certification basis of the CSeries airplanes includes § 25.981, as amended by Amendment 25–125, as required by 14 CFR 26.37. This amendment includes the ignition prevention requirements in § 25.981(a), as amended by Amendment 25–102, and it includes revised flammability limits for all fuel tanks and new specific limitations on flammability for all fuel tanks as defined in § 25.981(b), as amended by Amendment 25–125.

Ignition Source Prevention

Section 25.981(a)(3) requires applicants to show that an ignition source in the fuel tank system could not result from any single failure, from any single failure in combination with any latent failure condition not shown to be extremely remote, or from any combination of failures not shown to be extremely improbable. This requirement was originally adopted in Amendment 25–102, and it requires the assumption that the fuel tanks are always flammable when showing that the probability of an ignition source being present is extremely remote. (Amendment 25–102 included § 25.981(c) that required minimizing fuel tank flammability, and this was defined in the preamble as being equivalent to unheated aluminum fuel tanks located in the wing.) This requirement defines three types of scenarios that must be addressed in order to show compliance with § 25.981(a)(3). The first scenario is that any single failure, regardless of the probability of occurrence of the failure, must not cause an ignition source. The second scenario is that any single failure, regardless of the probability of occurrence, in combination with any latent failure condition not shown to be at least extremely remote, must not cause an ignition source. The third scenario is that any combination of failures not shown to be extremely improbable must not cause an ignition source. Demonstration of compliance with this requirement would typically require a structured, quantitative safety analysis. Design areas that have latent failure conditions typically would be driven by these requirements to have multiple fault tolerance, or ''triple redundancy.'' This means that ignition sources are still prevented even after two independent failures.

Flammability Limits

Section 25.981(b) states that no fuel tank fleet average flammability exposure may exceed 3 percent of the flammability exposure evaluation time calculated using the method in part 25, Appendix N, or the fleet average flammability of a fuel tank within the wing of the airplane being evaluated, whichever is greater. If the wing is not a conventional unheated aluminum wing, the analysis must be based on an assumed equivalent conventional construction unheated aluminum wing. In addition, for fuel tanks that are normally emptied during operation and that have any part of the tank located within the fuselage contour, the fleet average flammability for warm days (above 80 °F) must be limited to 3 percent as calculated using the method in part 25, Appendix M.

Application of Existing Regulations Inappropriate Due to Impracticality

Since the issuance of § 25.981(a)(3), as amended by Amendment 25–102, the FAA has conducted certification projects in which applicants found it impractical to meet the requirements of that regulation for some areas of lightning protection for fuel tank structure. Partial exemptions were issued for these projects. These same difficulties exist for the CSeries project.

The difficulty of designing multiple-fault-tolerant structure, and the difficulty of detecting failures of hidden structural design features in general, makes compliance with § 25.981(a)(3) uniquely challenging and impractical for certain aspects of the electrical bonding of structural elements. Such bonding is needed to prevent occurrence of fuel tank ignition sources from lightning strikes. The effectiveness and fault tolerance of electrical bonding features for structural joints and fasteners is partially dependent on design features that cannot be effectively inspected or tested after assembly without damaging the structure, joint, or fastener. Examples of such features include a required interference fit between the shank of a fastener and the hole in which the fastener is installed, metal foil or mesh imbedded in composite material, a required clamping force provided by a fastener to pull two structural parts together, and a required faying surface bond between the flush surfaces of adjacent pieces of structural material such as in a wing skin joint or a mounting bracket installation. In addition, other features that can be physically inspected or tested may be located within the fuel tanks; therefore, it is not practical to inspect for failures of those features at short intervals. Examples of such failures include separation or loosening of cap seals over fastener ends and actual structural failures of internal fasteners. This inability to practically detect manufacturing errors and failures of structural design features critical to lightning protection results in degraded conditions that occur and remain in place for a very long time, possibly for the remaining life of the airplane.

Accounting for such long failure latency periods in the system safety analysis required by § 25.981(a)(3) would require multiple fault tolerance in the structural lightning protection design. As part of the design development activity for the CSeries, Bombardier has examined possible design provisions to provide multiple fault tolerance in the structural design to prevent ignition sources from occurring in the event of lightning attachment to the airplane in critical locations. Bombardier has concluded from this examination that providing multiple fault tolerance for some structural elements is not practical. Bombardier has also identified some areas of the CSeries design where it is impractical to provide even single fault tolerance in the structural design to prevent ignition sources from occurring in the event of lightning attachment after a single failure. The FAA has reviewed this examination with Bombardier in detail and has agreed that providing fault tolerance beyond that in the proposed CSeries design for these areas would be impractical.

As a result of the CSeries and other certifications projects, the FAA has now determined that compliance with § 25.981(a)(3) is impractical for some areas of lightning protection for fuel tank structure, and that application of § 25.981(a)(3) to those design areas is therefore inappropriate. The FAA plans further rulemaking to revise § 25.981(a)(3). As appropriate, the FAA plans to issue special conditions or exemptions, for certification projects progressing before the revision is complete. This is discussed in FAA Memorandum ANM–112–08–002, *Policy on Issuance of Special Conditions and Exemptions Related to Lightning Protection of Fuel Tank Structure,* dated May 26, 2009.

Application of Existing Regulations Inappropriate Due to Compensating Feature That Provides Equivalent Level of Safety

Section 25.981(b) sets specific standards for fuel tank flammability as discussed above under ''Flammability

Limits.'' Under that regulation, the fleet average flammability exposure of all fuel tanks on the CSeries airplanes may not exceed 3 percent of the flammability exposure evaluation time calculated using the method in part 25, Appendix N, or the fleet average flammability of a wing main tank within an equivalent construction conventional unheated aluminum wing fuel tank, whichever is greater. The typical fleet average fuel tank flammability of fuel tanks located in the wing ranges between 1 and 5 percent. If it is assumed that a CSeries equivalent conventional unheated aluminum wing fuel tank would not exceed a fleet average flammability time of 3 percent, the actual composite airplane wing fuel tank design would be required to comply with the 3 percent fleet average flammability standard, and therefore a means to reduce the flammability to 3 percent would be required. However, the proposed CSeries design includes NGS for all fuel tanks that will also be shown to meet the additional, more stringent warm day average flammability standard in part 25, Appendix M, which is only required for normally emptied fuel tanks with some part of the tank within the fuselage contour. Fuel tanks that meet this requirement typically have average fuel tank flammability levels well below the required 3 percent.

Since the proposed NGS for all fuel tanks on the CSeries provides performance that meets part 25, Appendix M, the FAA has determined that the risk reduction provided by this additional performance will provide compensation for some relief from the ignition prevention requirements of § 25.981(a)(3) while still establishing a level of safety equivalent to that established in the regulations.

In determining the appropriate amount of relief from the ignition prevention requirements of § 25.981(a), the FAA considered the original overall intent of Amendment 25–102, which was to ensure the prevention of catastrophic events due to fuel tank vapor explosion. These proposed special conditions are intended to achieve that objective through a prescriptive requirement that fault tolerance (with respect to the creation of an ignition source) be provided for all structural lightning protection design features where providing such fault tolerance is practical, and through a performance-based standard for the risk due to any single failure vulnerability that exists in the design. In addition, for any structural lightning protection design features for which Bombardier shows that providing fault tolerance is impractical, these proposed special conditions would require Bombardier to show that a fuel tank vapor ignition event due to the summed risk of all non-fault-tolerant design features is extremely improbable. Bombardier would be required to show that this safety objective is met by the proposed design using a structured system safety assessment similar to that currently used for demonstrating compliance with §§ 25.901 and 25.1309.

Given these novel or unusual design features, and the compliance challenges noted earlier in this document, the FAA has determined that application of § 25.981(a)(3) is inappropriate in that it is neither practical nor necessary to apply the ignition source prevention provisions of § 25.981(a)(3) to the specific fuel tank structural lightning protection features of the Bombardier CSeries airplanes. However, without the § 25.981(a)(3) provisions, the remaining applicable regulations in the CSeries certification basis would be inadequate to set an appropriate standard for fuel tank ignition prevention. Therefore, in accordance with provisions of § 21.16, the FAA has determined that, instead of § 25.981(a)(3), alternative fuel tank structural lightning protection requirements be applied to fuel tank lightning protection features that are integral to the airframe structure of the CSeries airplanes. These proposed alternative requirements are intended to provide the level of safety intended by § 25.981(a)(3), based on our recognition, as discussed above, that a highly effective NGS for the fuel tanks makes it unnecessary to assume that the fuel tank is always flammable. As discussed previously, the assumption that the fuel tanks are always flammable was required when demonstrating compliance to the ignition prevention requirements of § 25.981(a)(3).

One resulting difference between these proposed special conditions and the § 25.981(a)(3) provisions they are meant to replace is the outcome being prevented—fuel vapor ignition versus an ignition source. These proposed special conditions acknowledge that the application of fuel tank flammability performance standards will reduce fuel tank flammability to an extent that it is appropriate to consider the beneficial effects of flammability reduction when considering design areas where it is impractical to comply with § 25.981(a)(3).

One of the core requirements of these proposed special conditions is a prescriptive requirement that structural lightning protection design features must be fault tolerant. (An exception wherein Bombardier can show that providing fault tolerance is impractical, and associated requirements, is discussed below.) The other core requirement is that Bombardier must show that the design, manufacturing processes, and Airworthiness Limitations section of the Instructions for Continued Airworthiness include all practical measures to prevent, and detect and correct, failures of structural lightning protection features due to manufacturing variability, aging, wear, corrosion, and likely damage. The FAA has determined that, if these core requirements are met, a fuel tank vapor ignition event due to lightning is not anticipated to occur in the life of the airplane fleet. This conclusion is based on the fact that a critical lightning strike to any given airplane is itself a remote event, and on the fact that fuel tanks must be shown to be flammable for only a relatively small portion of the fleet operational life.

For any non-fault-tolerant features proposed in the design, Bombardier must show that eliminating these features or making them fault tolerant is impractical. The requirements and considerations for showing it is impractical to provide fault tolerance are described in FAA Memorandum ANM–112–08–002. This requirement is intended to minimize the number of non-fault tolerant features in the design.

For areas of the design where Bombardier shows that providing fault tolerant structural lightning protection features is impractical, non-fault-tolerant features will be allowed provided Bombardier can show that a fuel tank vapor ignition event due to the non-fault-tolerant features is extremely improbable when the sum of probabilities of those events due to all non-fault-tolerant features is considered. Bombardier will be required to submit a structured, quantitative assessment of fleet average risk for a fuel tank vapor ignition event due to all non-fault-tolerant design features included in the design. This will require determination of the number of non-fault tolerant design features, estimates of the probability of the failure of each non-fault-tolerant design feature, and estimates of the exposure time for those failures. This analysis must include failures due to manufacturing variability, aging, wear, corrosion, and likely damage.

It is acceptable to consider the probability of fuel tank flammability, the probability of a lightning strike to the airplane, the probability of a lightning strike to specific zones of the airplane (for example, Zone 2 behind the nacelle, but not a specific location or feature), and a distribution of lightning strike amplitude in performing

the assessment provided the associated assumptions are acceptable to the FAA. The analysis must account for any dependencies among these factors, if they are used. The assessment must also account for operation with inoperative features and systems, including any proposed or anticipated dispatch relief. This risk assessment requirement is intended to ensure that an acceptable level of safety is provided given the non-fault-tolerant features in the proposed design.

Part 25, Appendix N, as adopted in Amendment 25–125, in conjunction with these proposed special conditions, constitutes the standard for how to determine flammability probability. In performing the safety analysis required by these special conditions, relevant § 25.981(a)(3) compliance guidance is still applicable. Appropriate credit for the conditional probability of environmental or operational conditions occurring is normally limited to those provisions involving multiple failures, and this type of credit is not normally allowed in evaluation of single failures. However, these special conditions would allow consideration of the probability of occurrence of lightning attachment and flammable conditions when assessing the probability of structural failures resulting in a fuel tank vapor ignition event.

The FAA understands that lightning protection safety for airplane structure is inherently different from lightning protection for systems. We intend to apply these proposed special conditions only to structural lightning protection features of fuel systems. We do not intend to apply the alternative standards used under these proposed special conditions to other areas of the airplane design evaluation.

Requirements Provide Equivalent Level of Safety

In recognition of the unusual design feature discussed above, and the impracticality of requiring multiple fault tolerance for lightning protection of certain aspects of fuel tank structure, the FAA has determined that a level of safety that is equivalent to direct compliance with § 25.981(a)(3) will be achieved for the CSeries by applying these proposed requirements. The FAA considers that, instead of only concentrating on fault tolerance for ignition source prevention, significantly reducing fuel tank flammability exposure in addition to preventing ignition sources is a better approach to lightning protection for the fuel tanks. In addition, the level of average fuel tank flammability achieved by compliance with these proposed special conditions is low enough that it is not appropriate or accurate to assume in a safety analysis that the fuel tanks may always be flammable.

Section 25.981(b), as amended by Amendment 25–125, sets limits on the allowable fuel tank flammability for the CSeries airplanes. Paragraph 2(a) of these proposed special conditions applies the more stringent standard for warm day flammability performance applicable to normally emptied tanks within the fuselage contour from § 25.981(b) and part 25, Appendix M, to all of the fuel tanks of the CSeries airplanes.

Because of the more stringent fuel tank flammability requirements in these proposed special conditions, and because the flammability state of a fuel tank is independent of the various failures of structural elements that could lead to an ignition source in the event of lightning attachment, the FAA has agreed that it is appropriate in this case to allow treatment of flammability as an independent factor in the safety analysis. The positive control of flammability and the lower flammability that is required by these proposed special conditions exceeds the minimum requirements of § 25.981(b). This offsets a reduction of the stringent standard for ignition source prevention in § 25.981(a)(3), which assumes that the fuel tank is flammable at all times.

Given the stringent requirements for fuel tank flammability, the fuel vapor ignition prevention and the ignition source prevention requirements in these proposed special conditions will prevent ‘‘. . . catastrophic failure . . . due to ignition of fuel or vapors’’ as stated in § 25.981(a). Thus, the overall level of safety achieved by these proposed special conditions is considered equivalent to that which would be required by compliance with § 25.981(a)(3) and (b).

Applicability

As discussed above, these special conditions are applicable to the Models BD–500–1A10 and BD–500–1A11 series airplanes. Should Bombardier Aerospace apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on two model series of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Bombardier Aerospace Models BD–500–1A10 and BD–500–1A11 series airplanes.

Alternate Fuel Tank Structural Lightning Protection Requirements

1. Definitions

Most of the terms used in these proposed special conditions either have the common dictionary meaning or are defined in Advisory Circular 25.1309–1A, *System Design and Analysis,* dated June 21, 1988. The following definitions are the only terms intended to have a specialized meaning when used in these proposed special conditions:

(a) *Basic Airframe Structure.* Includes design elements such as structural members, structural joint features, and fastener systems including airplane skins, ribs, spars, stringers, etc., and associated fasteners, joints, coatings, and sealant. Basic airframe structure may also include those structural elements that are expected to be removed for maintenance, such as exterior fuel tank access panels and fairing attachment features, provided maintenance errors that could compromise associated lightning protection features would be evident upon an exterior preflight inspection of the airplane and would be corrected prior to flight.

(b) *Permanent Systems Supporting Structure.* Includes static, permanently attached structural parts (such as brackets) that are used to support system elements. It does not include any part intended to be removed, or any joint intended to be separated, to maintain or replace system elements or other parts, unless that part removal or joint separation is accepted by the FAA as being extremely remote.

(c) *Manufacturing Variability.* Includes tolerances and variability allowed by the design and production specifications as well as anticipated errors or escapes from the manufacturing and inspection processes.

(d) *Extremely Remote.* Conditions that are not anticipated to occur to each airplane during its total life, but which

may occur a few times when considering the total operational life of all airplanes of one type. Extremely remote conditions are those having an average probability per flight hour on the order of 1×10^{-7} or less, but greater than on the order of 1×10^{-9}.

(e) *Extremely Improbable.* Conditions that are so unlikely that they are not anticipated to occur during the entire operational life of all airplanes of one type. Extremely improbable conditions are those having an average probability per flight hour of the order of 1×10^{-9} or less.

2. Alternative Fuel Tank Structural Lightning Protection Requirements

For lightning protection features that are integral to fuel tank basic airframe structure or permanent systems supporting structure, as defined in Special Condition No. 1, ''Definitions,'' for which Bombardier shows and the FAA finds compliance with § 25.981(a)(3) to be impractical, the following requirements may be applied in lieu of the requirements of § 25.981(a)(3):

(a) Bombardier must show that the airplane design meets the requirements of part 25, appendix M, as amended by Amendment 25–125, for all fuel tanks installed on the airplane.

(b) Bombardier must show that the design includes at least two independent, effective, and reliable lightning protection features (or sets of features) such that fault tolerance to prevent lightning-related ignition sources is provided for each area of the structural design proposed to be shown compliant with these special conditions in lieu of compliance with the requirements of § 25.981(a)(3). Fault tolerance is not required for any specific design feature if:

(1) For that feature, providing fault tolerance is shown to be impractical, and

(2) Fuel tank vapor ignition due to that feature and all other non-fault-tolerant features, when their fuel tank vapor ignition event probabilities are summed, is shown to be extremely improbable.

(c) Bombardier must perform an analysis to show that the design, manufacturing processes, and the airworthiness limitations section of the instructions for continued airworthiness include all practical measures to prevent, and detect and correct, failures of structural lightning protection features due to manufacturing variability, aging, wear, corrosion, and likely damage.

Issued in Renton, Washington, on June 6, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–17517 Filed 7–24–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0483; Directorate Identifier 2014–NM–082–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2013–16–08 for certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, and Model CL–600–2D24 (Regional Jet Series 900) airplanes. Since we issued AD 2013–16–08, we have determined that a certain part was incorrectly identified in a certain section of that AD. This proposed AD would continue to require inspection of the MLG retraction actuator components; corrective actions if necessary; and, for certain retraction actuators, installation of a new jam nut. We are proposing this AD to prevent disconnection of the MLG retraction actuator, which could result in extension of the MLG without damping, and consequent structural damage and collapse of the MLG during landing.

DATES: We must receive comments on this proposed AD by September 8, 2014.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For Bombardier service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

For Goodrich service information identified in this proposed AD, contact Goodrich Corporation, Landing Gear, 1400 South Service Road, West Oakville L6L 5Y7, Ontario, Canada; telephone 905–825–1568; email *jean.breed@goodrich.com;* Internet *http://www.goodrich.com/TechPubs.*

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–2014–0483; 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 Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7318; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0483; Directorate Identifier 2014–NM–082–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any

personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On July 31, 2013, we issued AD 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013). AD 2013–16–08 requires actions intended to address an unsafe condition on certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, and Model CL–600–2D24 (Regional Jet Series 900) airplanes.

Since we issued AD 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013), we have determined that the MLG dressed shock strut was incorrectly identified as an MLG retraction actuator assembly in paragraph (k)(2) of the ''Parts Installation Limitations'' section in AD 2013–16–08. We have revised paragraph (k)(2) of this proposed AD accordingly.

In addition, we corrected a typographical error in the service bulletin number specified in paragraph (j)(1)(iii) of AD 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013), under ''Credit for Previous Actions.'' Bombardier Service Bulletin ''769BA–32–031'' was changed to Bombardier Service Bulletin ''670BA–32–031.''

FAA's Determination and Requirements of This Proposed AD

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

''Contacting the Manufacturer'' Paragraph in This Proposed AD

Since late 2006, we have included a standard paragraph titled ''Airworthy Product'' in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD.

The MCAI or referenced service information in an FAA AD often directs the owner/operator to contact the manufacturer for corrective actions, such as a repair. Briefly, the Airworthy Product paragraph allowed owners/operators to use corrective actions provided by the manufacturer if those actions were FAA-approved. In addition, the paragraph stated that any actions approved by the State of Design Authority (or its delegated agent) are considered to be FAA-approved.

In an NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013), we proposed to prevent the use of repairs that were not specifically developed to correct the unsafe condition, by requiring that the repair approval provided by the State of Design Authority or its delegated agent specifically refer to the FAA AD. This change was intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we proposed to change the phrase ''its delegated agent'' to include a design approval holder (DAH) with State of Design Authority design organization approval (DOA), as applicable, to refer to a DAH authorized to approve required repairs for the proposed AD.

One commenter to the NPRM having Directorate Identifier 2012–NM–101–AD (78 FR 78285, December 26, 2013) stated the following: ''The proposed wording, being specific to repairs, eliminates the interpretation that Airbus messages are acceptable for approving minor deviations (corrective actions) needed during accomplishment of an AD mandated Airbus service bulletin.''

This comment has made the FAA aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed the paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this proposed AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the FAA, Transport Canada Civil Aviation (TCCA), or Bombardier's TCCA Design Approval Organization (DAO).

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DAO, the approval must include the DAO-authorized signature. The DAO signature indicates that the data and information contained in the document are TCCA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DAO-authorized signature approval are not TCCA-approved, unless TCCA directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are ''Required for Compliance'' with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

Costs of Compliance

We estimate that this proposed AD affects 391 airplanes of U.S. registry.

The actions that were required by AD 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013), that are retained in this proposed AD take up to 16 work-hours per product, at an average labor rate of $85 per work-hour. Required parts cost about $1,018 per product. Based on these figures, the estimated cost of the actions that are required by AD 2013–16–08 is $2,378 per product.

The new requirements of this AD add no additional economic burden.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013), and adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2014–0483; Directorate Identifier 2014–NM–082–AD.

(a) Comments Due Date

We must receive comments by September 8, 2014.

(b) Affected ADs

This AD replaces AD 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013).

(c) Applicability

This AD applies to the airplanes specified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial numbers 10002 and subsequent.

(2) Bombardier, Inc. Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code 32: Landing Gear.

(e) Reason

This AD was prompted by a report of corrosion of the components of the main landing gear (MLG) retraction actuator found in service; the corrosion was found at the interface of the rod end and the piston, and at the bracket and related pins. We are issuing this AD to prevent disconnection of the MLG retraction actuator, which could result in extension of the MLG without damping, and consequent structural damage and collapse of the MLG during landing.

(f) Compliance

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

(g) Retained Inspection of the MLG Retraction Actuator and Corrective Actions With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013), with no changes. For any airplane with an MLG retraction actuator assembly having any part number and serial number identified in paragraph 1.A., Effectivity, of Bombardier Service Bulletin 670BA–32–031, Revision C, dated April 17, 2012, except airplanes on which modification status ''32–64'' is marked on the identification plate: At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD, perform a detailed inspection of the retraction actuator assembly for evidence of corrosion and security of the jam nut, as applicable, in accordance with Part A of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–031, Revision C, dated April 17, 2012; and Goodrich Service Bulletin 49600–32–63 R1, dated May 17, 2011. If any corrosion or unsecured jam nut is found, before further flight, replace the retract actuator with a new or serviceable retract actuator; and install the retract actuator in accordance with Part A of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–031, Revision C, dated April 17, 2012. Repeat the inspection thereafter at intervals not to exceed 1,200 flight hours or 12 months, whichever occurs first.

(1) For MLG retraction actuator assemblies on which, as of September 24, 2013 (the effective date of AD 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013)), 8,000 or more total flight hours have accumulated since new or since overhaul, or that have been in service for more than 4 years since new or since overhaul: Inspect within 1,200 flight hours or 12 months after September 24, 2013, whichever occurs first.

(2) For MLG retraction actuator assemblies on which, as of September 24, 2013 (the effective date of AD 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013)), less than 8,000 total flight hours have accumulated since new or since overhaul, and that have been in service for 4 years or less since new or since overhaul: Inspect before the accumulation of 9,200 total flight hours on the MLG retraction actuator assembly since new or since overhaul or within 5 years in service since new or since overhaul, whichever occurs first.

(h) Retained Inspection of MLG Retraction Actuator Bracket and Related Pins, and Corrective Actions With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013), with no changes. For any airplane with an MLG dressed shock strut having any part number and serial number identified in paragraph 1.A., Effectivity, of Bombardier Service Bulletin 670BA–32–033, Revision B, dated June 26, 2012: Within 4,400 flight hours or 24 months after September 24, 2013 (the effective date of AD 2013–16–08), whichever occurs first, perform a detailed inspection of the retract actuator bracket assembly, associated pins, and the mating lugs on the outer cylinder for evidence of corrosion, in accordance with Bombardier Service Bulletin 670BA–32–033, Revision B, dated June 26, 2012; and Goodrich Service Bulletin 49000–32–46 R2, dated November 11, 2011. Do all applicable corrective actions before further flight (i.e., replace retract actuator bracket assembly and pins, or outer cylinder lugs, as applicable).

(i) Retained Installation of New Jam Nut With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013), with no changes. For any airplane with an MLG retraction actuator assembly having any part number and serial number identified in paragraph 1.A., Effectivity, of Bombardier Service Bulletin 670BA–32–031, Revision C, dated April 17, 2012, except airplanes on which modification status ''32–64'' is marked

on the identification plate: Within 20,000 flight hours or 10 years after September 24, 2013 (the effective date of AD 2013–16–08), whichever occurs first, install a new jam nut having part number 49606–5, in accordance with Part B of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–031, Revision C, dated April 17, 2012; and Goodrich Service Bulletin 49600–32–64 R3, dated December 15, 2011.

(j) Retained Credit for Previous Actions With Change to Paragraph (j)(1)(iii) of This AD

(1) This paragraph restates the credit provided by paragraph (j)(1) of AD 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013), with a change to the service information citation in paragraph (j)(1)(iii) of this AD. This paragraph provides credit for the actions required by paragraphs (g) and (i) of this AD, if those actions were performed before September 24, 2013 (the effective date of AD 2013–16–08), using the service information specified in paragraph (j)(1)(i), (j)(1)(ii), or (j)(1)(iii) of this AD, which is not incorporated by reference in this AD.

(i) Bombardier Service Bulletin 670BA–32–031, dated March 14, 2011.

(ii) Bombardier Service Bulletin 670BA–32–031, Revision A, dated June 9, 2011.

(iii) Bombardier Service Bulletin 670BA–32–031, Revision B, dated July 29, 2011.

(2) This paragraph restates the credit provided by paragraph (j)(2) of AD 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013), with no changes. This paragraph provides credit for the actions required by paragraph (h) of this AD, if those actions were performed before September 24, 2013 (the effective date of AD 2013–16–08), using the service information specified in paragraph (j)(2)(i) or (j)(2)(ii) of this AD, which is not incorporated by reference in this AD.

(i) Bombardier Service Bulletin 670BA–32–033, dated March 14, 2011.

(ii) Bombardier Service Bulletin 670BA–32–033, Revision A, dated July 29, 2011.

(k) Retained Parts Installation Limitations With Change to Paragraph (k)(2) of This AD

(1) This paragraph restates the parts installation limitation specified in paragraph (k)(1) of AD 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013), with no changes. As of September 24, 2013 (the effective date of AD 2013–16–08), no person may install on any airplane an MLG retraction actuator assembly having any part number and serial number identified in paragraph 1.A., Effectivity, of Bombardier Service Bulletin 670BA–32–031, Revision C, dated April 17, 2012, unless that retraction actuator assembly has been inspected as specified in paragraph (g) of this AD, and all applicable corrective actions (i.e., replacement of the retract actuator) specified in paragraph (g) of this AD have been done. Repeat the inspection specified in paragraph (g) of this AD thereafter at the intervals specified in paragraph (g) of this AD.

(2) This paragraph restates the parts installation limitation specified in paragraph (k)(2) of AD 2013–16–08, Amendment 39–17546 (78 FR 51055, August 20, 2013), with a revised part name. As of the effective date of this AD, no person may install on any airplane an MLG dressed shock strut having any part number and serial number identified in paragraph 1.A., Effectivity, of Bombardier Service Bulletin 670BA–32–033, Revision B, dated June 26, 2012, unless that retraction actuator assembly has been inspected and all applicable corrective actions have been done, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–033, Revision B, dated June 26, 2012.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, Engine and Propeller Directorate, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2011–36R1, dated October 3, 2012, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0483.

(2) For Bombardier service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(3) For Goodrich service information identified in this AD, contact Goodrich Corporation, Landing Gear, 1400 South Service Road, West Oakville L6L 5Y7, Ontario, Canada; telephone 905–825–1568; email *jean.breed@goodrich.com;* Internet *http://www.goodrich.com/TechPubs.*

Issued in Renton, Washington, on July 13, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–17550 Filed 7–24–14; 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–0988]

BASF Corp.; Filing of Food Additive Petition (Animal Use)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of petition.

SUMMARY: The Food and Drug Administration (FDA) is announcing that BASF Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of sodium formate as an acidifier in swine feed.

DATES: Submit either electronic or written comments on the petitioner's request for categorical exclusion from preparing an environmental assessment or environmental impact statement by August 25, 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 (HFV–226), 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)), notice is given that a food additive petition (FAP 2286) has been filed by BASF Corp., 100 Park Ave. Florham Park, NJ 07932. The petition proposes to amend Title 21 of the Code of Federal Regulations (CFR) in part 573 *Food Additives Permitted in Feed and Drinking Water of Animals* (21 CFR part 573) to provide for the safe use of sodium formate as an acidifier in swine feed.

The petitioner has requested a categorical exclusion from preparing an environmental assessment or environmental impact statement under 21 CFR 25.32(r). Interested persons may

submit either electronic or written comments regarding this request for categorical exclusion to the Division of Dockets Management (see **DATES** and **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: July 21, 2014.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2014–17458 Filed 7–24–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 816 and 817

[Docket ID: OSM–2014–0003; S1D1S SS08011000 SX066A00067F 134S180110; S2D2S SS08011000 SX066A00 33F 13XS501520]

Petition To Initiate Rulemaking; Use of Explosives on Surface Coal Mining Operations

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice; availability of petition to initiate rulemaking and request for comments on the petition.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), seek comments concerning a petition, submitted pursuant to the Surface Mining Control and Reclamation Act, 30 U.S.C. 1201 et seq. (SMCRA or the Act), requesting that we amend our regulations governing the use of explosives to prohibit visible nitrogen oxide clouds. We are requesting comments on the merits of the petition and the rule changes suggested in the petition. Comments received will assist the Director of OSMRE in making the decision whether to grant or deny the petition.

DATES: *Electronic or written comments:* We will accept written comments on the proposed rule on or before August 25, 2014.

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

Federal eRulemaking Portal: http://www.regulations.gov. The petition has been assigned Docket ID: OSM–2014–0003. Please follow the online instructions for submitting comments.

Mail/Hand-Delivery/Courier: Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 252 SIB, 1951 Constitution Avenue NW., Washington, DC 20240. Please include the Docket ID: OSM–2014–0003.

FOR FURTHER INFORMATION CONTACT: Joshua Rockwell, Division of Regulatory Support, 1951 Constitution Ave. NW., Washington, DC 20240; Telephone: 202–208–2633; Email: *jrockwell@osmre.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. How does the petition process operate?
II. What action does the petition request that we take?
III. How may I view the petition and exhibits?
IV. How do I submit comments on the petition?
V. Procedural Matters and Required Determinations

I. How does the petition process operate?

Section 201(g) of SMCRA, 30 U.S.C. 1201(g), provides that any person may petition the Director of OSMRE to initiate a proceeding for the issuance, amendment, or repeal of any regulation adopted under SMCRA. It also specifies that ''the Director shall either grant or deny the petition'' within 90 days after receipt. On March 13, 1979, OSMRE adopted regulations at 30 CFR 700.12 to further implement this statutory provision.

Under 30 CFR 700.12(c), we will accept a petition for rulemaking only if the Director determines that it sets forth ''facts, technical justification and law which may provide a reasonable basis for issuance, amendment or repeal of a regulation.'' The rule also states that facts, technical justification or law previously considered in a different petition or rulemaking on the same issue do not qualify as a reasonable basis. Any petition that does not meet this threshold will be rejected without prejudice.

If we accept the petition, we will publish a notice in the **Federal Register** seeking comments on whether we should grant or deny the petition. At the close of the comment period, the Director will decide to either grant or deny the petition, in whole or in part. We will publish notice of that decision in the **Federal Register**. If the Director grants the petition, we will initiate rulemaking proceedings in which we again will seek public comment before adopting a final rule. If the Director denies the petition, we will notify the petitioner of the reasons for the decision not to initiate any rulemaking action pursuant to the petition.

In accordance with 30 CFR 700.12(d), the Director's decision on a petition is a final decision for the Department, which means that the petitioner is not entitled to administrative review of the decision. The Director's decision on a petition constitutes the final decision of the Department of the Interior. Accordingly, it is not subject to review by the Office of Hearings and Appeals. However, the petitioner may seek judicial review of a decision to reject or deny the petition.

II. What action does the petition request that we take?

On April 18, 2014, we received from WildEarth Guardians a petition for rulemaking requesting that OSMRE promulgate rules to prohibit the production of visible nitrogen oxides (NO_X) emissions during blasting at surface coal mining operations in order to protect the health, welfare, and safety of the public and of mine workers, and to prevent injury to persons. The petition requests that we amend our regulations at 30 CFR 816.67 and 817.67 to prohibit visible NO_X emissions during blasting and to require that the operator visually monitor all blasting activities and report all instances of visible emissions of NO_X to the regulatory authority.

III. How may I view the petition and exhibits?

You may view and download the complete text of the petition and accompanying exhibits on our home page at *http://www.osmre.gov/programs/rcm/petitions/WEGPetition041414.pdf* and *http://www.osmre.gov/programs/rcm/petitions/WEGPetitionExhibits.pdf* respectively. The petition and exhibits also are available for inspection at the location listed under **ADDRESSES.**

IV. How may I comment on the petition?

General Guidance

We are seeking comment on the merits of the petition and the requested rule changes. In addition, we seek comment on the extent to which the decision in *In re Permanent Surface Min. Regulation Litig. I, Round II,* 1980 U.S. Dist. LEXIS 17660 at *43–44 (D.D.C., May 16, 1980), 19 Env't Rep. Cas. (BNA) 1477, 1491–1492, regarding OSMRE's authority to regulate air quality, should guide the Director in making the decision to grant or deny the

petition. In that decision, the court remanded the 1979 version of 30 CFR 816.95 and 817.95, which contained extensive provisions regulating fugitive dust (including fugitive dust from blasting [1]), because the court found that ''the Secretary's authority to regulate [air] pollution is limited to activities related to erosion.'' Id. at 1491.

We will review and consider all comments submitted to the addresses listed above (see **ADDRESSES**) by the close of the comment period (see **DATES**).

Please include the Docket ID ''OSM–2014–0003'' at the beginning of all written comments. We cannot ensure that comments received after the close of the comment period (see **DATES**) or at locations other than those listed above (see **ADDRESSES**) will be included in the docket or considered in the development of a proposed rule.

Public Availability of Comments

Before including your address, phone number, 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.

Public Hearing

We will not hold a public hearing on the petition. The petitioner did not request a hearing and we have determined under 30 CFR 700.12(c) that no hearing is necessary. However, OSMRE personnel will be available to meet with the public during business hours (8 a.m. to 4 p.m.) during the comment period. Contact the person listed under **FOR FURTHER INFORMATION CONTACT** if you wish to arrange a meeting.

V. Procedural Matters and Required Determinations

This notice is not a proposed or final rule, policy, or guidance. Therefore, it is not subject to the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, the Paperwork Reduction Act, the Unfunded Mandates Reform Act, or Executive Orders 12866, 13563, 12630, 13132, 12988, 13175, and 13211. We will conduct the analyses required by these laws and executive orders only if we decide to grant the petition and develop a proposed rule.

[1] 30 CFR 816.95(b)(15) (1979).

In developing this notice, we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554, section 15).

This notice is not subject to the requirement to prepare an Environmental Assessment or Environmental Impact Statement under the National Environmental Policy Act (NEPA), 42 U.S.C. 4332(2)(C), because no proposed action, as described in 40 CFR 1508.18(a) and (b), yet exists. This notice only seeks public comment on whether the Director should grant the petition and initiate rulemaking. If the Director ultimately grants the petition, we will prepare the appropriate NEPA compliance documents as part of the rulemaking process.

List of Subjects

30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Dated: July 15, 2014.

Joseph G. Pizarchik,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 2014–17592 Filed 7–24–14; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket Number USCG–2014–0541]

RIN 1625–AA08, AA00

Special Local Regulations for Marine Events and Safety Zone, Patapsco River; Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary regulations in certain waters of the Patapsco River. This action is necessary to provide for the safety of life on navigable waters before, during, and after the Star-Spangled Spectacular Fireworks scheduled as part of War of 1812 Bicentennial Commemorations activities at Baltimore, Maryland during September 6–16, 2014. This action will restrict vessel traffic in portions of the Patapsco River, including the Northwest Harbor and Baltimore's Inner Harbor.

DATES: Comments and related material must be received by the Coast Guard on or before August 25, 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 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. 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–2014–0541] 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–2014–0138) 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**. 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 rule involves a fireworks display associated with a televised event that will take place in Baltimore, Maryland, on September 13, 2014 and will attract thousands of spectators. The launch sites for the fireworks display are from discharge barges located in the Patapsco River. The permanent safety zones listed in the Table to 33 CFR 165.506 do not apply to this event.

This rule also involves designated on-water spectator areas associated with the fireworks display. The current regulations under 33 CFR part 100 address safety for reoccurring marine events. This marine event does not appear in the current regulations; however, as it is a regulation to provide effective control over regattas and marine parades on the navigable waters of the United States so as to insure safety of life in the regatta or marine parade area, this marine event therefore needs to be temporarily added.

C. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to ensure safety of life on navigable waters of the United States for designated on-water spectator areas established in support of the Star-Spangled Spectacular Fireworks event.

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.

D. Discussion of Proposed Rule

The Baltimore Office of Promotion and The Arts, of Baltimore, MD, will sponsor a large fireworks display launched from barges located at seven locations in the Patapsco River at Baltimore, Maryland, scheduled on September 13, 2014 at 9 p.m. A rehearsal of the fireworks show is planned on September 12, 2014 at 9 p.m. If necessary due to inclement weather, the event will be held on September 14, 2014.

Through this regulation, the Coast Guard proposes to establish a safety zone. The safety zone will encompass all waters of the Patapsco River, as follows: (1) Within a 150 foot radius of a fireworks discharge barge in approximate position latitude 39°17′03″ N, longitude 076°36′36″ W, located southeast of Pier 1 Inner Harbor at Baltimore, Maryland; (2) within a 300 foot radius of a fireworks discharge barge in approximate position latitude 39°16′55″ N, longitude 076°36′17″ W, located southwest of Pier 6 Inner Harbor at Baltimore, Maryland; (3) within a 600 foot radius of a fireworks discharge barge in approximate position latitude 39°16′38″ N, longitude 076°35′55″ W, located northwest of the Domino Sugar (ASR Group) refinery wharf at Baltimore, Maryland; (4) within a 500 foot radius of a fireworks discharge barge in approximate position latitude 39°16′42″ N, longitude 076°35′30″ W, located south of the Fells Point Recreation Pier at Baltimore, Maryland; (5) within a 500 foot radius of a fireworks discharge barge in approximate position latitude 39°16′28″ N, longitude 076°34′59″ W, located north of the North Locust Point Marine Terminal at Baltimore, Maryland; (6) within a 600 foot radius of a fireworks discharge barge in approximate position latitude 39°16′15″ N, longitude 076°34′38″ W, located south of the Northwest Harbor Turning Basin at Baltimore, Maryland; and (7) within a 800 foot radius of each of the fireworks discharge barges arranged in a line between approximate position latitude 39°15′47″ N, longitude 076°34′30″ W, and approximate position latitude 39°15′40″ N, longitude 076°34′37″ W, located along the Northwest Harbor (East Channel) at Baltimore, Maryland. The temporary safety zone will be enforced from 7:00 p.m. to 10 p.m. on September 12, 2014, and from 7:30 p.m. to 11 p.m. on September 13, 2014, and if necessary due to inclement weather, from 7:30 p.m. to 11 p.m. on September 14, 2014. The effect of this safety zone will be to restrict navigation in the regulated area during, as well as the set up and take down of, the fireworks display.

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.

The Coast Guard also proposes to establish special local regulations on specified waters of the Patapsco River by which spectator vessels may observe the Star-Spangled Spectacular Fireworks on September 13, 2014. This action is necessary to ensure the safety of participants and spectators immediately prior to, during, and following the Star-Spangled Spectacular Fireworks. The regulations will be enforced from 7:30 p.m. to 11 p.m. on September 13, 2014, and if necessary due to inclement weather, from 7:30 p.m. to 11 p.m. on September 14, 2014. The proposed regulated area extends across the entire width of the waterway and will encompass all waters of the Patapsco River, bounded on the east by a line drawn from position latitude 39°15′42″ N, longitude 076°34′48″ W, thence to position latitude 39°15′29″ N, longitude 076°34′34″ W, thence to position latitude 39°15′36″ N, longitude 076°34′12″ W, and bounded on the west by the Inner Harbor western bulkhead, located at Baltimore, MD. Designated spectator areas and an event area exist within this regulated area. Three designated spectator areas, where all vessels are prohibited from transiting in excess of wake speed unless authorized by the Captain of the Port Baltimore or his designated representative and persons and vessels may enter, transit through, anchor in, or remain within, include: (a) All waters of the Patapsco River, within lines connecting the following positions: From latitude 39°16′40″ N, longitude 076°35′10″ W, thence northeasterly to latitude 39°16′45″ N, longitude 076°35′04″ W, thence southeasterly to latitude 39°16′41″ N, longitude 076°34′57″ W, thence northeasterly to latitude 39°16′45″ N, longitude 076°34′50″ W, thence southerly to latitude 39°16′38″ N, longitude 076°34′50″ W, thence southwesterly to latitude 39°16′34″ N, longitude 076°34′55″ W, thence northwesterly to the position of origin. This spectator area is to be used by commercial vessels only; (b) All waters of the Patapsco River, within lines connecting the following positions: From latitude 39°16′27″ N, longitude 076°34′41″ W, thence northerly to latitude 39°16′37″ N, longitude 076°34′37″ W, thence easterly to latitude 39°16′35″ N, longitude 076°34′16″ W, thence southerly to latitude 39°16′18″ N, longitude 076°34′21″ W, thence westerly to the position of origin. This spectator area is to be used by recreational vessels only; and (c) All waters of the Patapsco River, within lines connecting the following positions: From latitude 39°16′53″ N, longitude 076°36′10″ W, thence southerly to latitude 39°16′49″ N, longitude 076°36′17″ W, thence easterly to latitude 39°16′35″ N, longitude 076°36′04″ W, thence northerly to latitude 39°16′48″ N, longitude 076°36′02″ W, thence westerly to the position of origin. This spectator area is to be used by both commercial and recreational vessels. The event area, where all persons and vessels, except those persons and vessels participating in the event, are prohibited from entering, transiting through, anchoring in, or remaining within, includes all waters of the Patapsco River, within the regulated area, excluding the designated spectator areas.

The effect of this proposed rule will be to restrict general navigation in the regulated area during the event. Vessels intending to transit the Patapsco River through the regulated area will be allowed to safely transit the regulated area only when the Coast Guard Patrol Commander has deemed it safe to do so. The Coast Guard will restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels. The Coast Guard will provide notice of the special local regulations by Local Notice to Mariners, Broadcast Notice to Mariners, and the official patrol on scene.

The regulations contained within this proposed rule are not intended to effect existing Naval Vessel Protection Zone regulations described in Title 33 CFR Part 165 (Subpart G).

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 economic impact of this rule is not significant for the following reasons: The primary impact of these regulations will be on vessels wishing to transit the affected waterways during activities associated with the Star-Spangled Spectacular fireworks display beginning on September 12, 2014 and ending on September 14, 2014. Although these regulations prevent traffic from transiting a portion of the Patapsco River during this event, that restriction is limited in duration, affects only a limited area, and will be well publicized to allow mariners to make alternative plans for transiting the affected area. Moreover, the magnitude of the event itself will severely hamper or prevent transit of the waterway, even absent these regulations designed to ensure it is conducted in a safe and orderly fashion.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. 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 may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Patapsco River encompassed within the special local regulations from 7:30 p.m. on September 13, 2014 to 11 p.m. on September 14, 2014 and encompassed within the safety zone from 7 p.m. on September 12, 2014 to 11 p.m. on September 14, 2014. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

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 special local regulations issued in conjunction with a regatta or marine parade. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**.

Additionally, this proposed rule involves establishing a temporary safety zone for a fireworks display. The fireworks are launched from navigable waters of the United States and may have potential for negative impact on the safety or other interest 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. A preliminary 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 proposed rule.

List of Subjects

33 CFR Part 100

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

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 parts 100 and 165 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary section, § 100.35–T05–0541 to read as follows:

§ 100.35–T05–0541 Special Local Regulations for Marine Events, Patapsco River; Baltimore, MD.

(a) *Regulated areas.* The following regulated areas are established as special local regulations. All

coordinates are North American Datum 1983.

(1) *Regulated area.* The following location is a regulated area: All waters of the Patapsco River, bounded on the east by a line drawn from position latitude 39°15′42″ N, longitude 076°34′48″ W, thence to position latitude 39°15′29″ N, longitude 076°34′34″ W, thence to position latitude 39°15′36″ N, longitude 076°34′12″ W, and bounded on the west by the Inner Harbor's western bulkhead, located at Baltimore, MD.

(2) *Designated spectator areas.* The following locations are spectator areas within the regulated area:

(i) All waters of the Patapsco River, within lines connecting the following positions: From latitude 39°16′40″ N, longitude 076°35′10″ W, thence northeasterly to latitude 39°16′45″ N, longitude 076°35′04″ W, thence southeasterly to latitude 39°16′41″ N, longitude 076°34′57″ W, thence northeasterly to latitude 39°16′45″ N, longitude 076°34′50″ W, thence southerly to latitude 39°16′38″ N, longitude 076°34′50″ W, thence southwesterly to latitude 39°16′34″ N, longitude 076°34′55″ W, thence northwesterly to the position of origin.

(ii) All waters of the Patapsco River, within lines connecting the following positions: From latitude 39°16′27″ N, longitude 076°34′41″ W, thence northerly to latitude 39°16′37″ N, longitude 076°34′37″ W, thence easterly to latitude 39°16′35″ N, longitude 076°34′16″ W, thence southerly to latitude 39°16′18″ N, longitude 076°34′21″ W, thence westerly to the position of origin.

(iii) All waters of the Patapsco River, within lines connecting the following positions: From latitude 39°16′53″ N, longitude 076°36′10″ W, thence southerly to latitude 39°16′49″ N, longitude 076°36′17″ W, thence easterly to latitude 39°16′35″ N, longitude 076°36′04″ W, thence northerly to latitude 39°16′48″ N, longitude 076°36′02″ W, thence westerly to the position of origin.

(3) *Event area.* All waters of the Patapsco River, within the regulated area, excluding the designated spectator areas as described in paragraph (a)(2) of this section.

(b) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U. S. Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* means all persons and vessels participating in the Star-Spangled Spectacular Fireworks event under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Baltimore.

(4) *Spectator* means all persons and vessels not registered with the event sponsor as participants or official patrol.

(c) *Special local regulations:* (1) The Coast Guard Patrol Commander may forbid and control the movement of all vessels and persons in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) The Coast Guard Patrol Commander may terminate the event, or the operation of any participant in the event, at any time it is deemed necessary for the protection of life or property. The Coast Guard may be assisted in the patrol and enforcement of the regulated area by other Federal, State, and local agencies.

(3) All Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz).

(4) Only participants and official patrol are allowed to enter the event area as described in Paragraph a(3) of this section.

(5) Spectators are allowed inside the regulated area only if they remain within the designated spectator area. Recreational vessels spectators will be permitted to anchor only within the designated spectator areas described in paragraph (a)(2)(i) and (a)(2)(iii) of this section. Commercial vessels spectators will be permitted to anchor only within the designated spectator areas described in paragraph (a)(2)(ii) and (a)(2)(iii) of this section. No vessel may anchor within the regulated area outside the designated spectator areas. Spectators may contact the Coast Guard Patrol Commander to request permission to pass through the regulated area. If permission is granted, spectators shall comply with the directions given and must pass directly through the regulated area, outside the event area, at a safe speed and without loitering.

(6) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

(d) *Enforcement period:* This section will be enforced from 7:30 p.m. to 11 p.m. on September 13, 2014, and if necessary due to inclement weather, from 7:30 p.m. to 11 p.m. on September 14, 2014.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 3. 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.

■ 4. Add temporary § 165.T05–0541 to read as follows:

§ 165.T05–0541 Safety Zone, Patapsco River; Baltimore, MD.

(a) *Location.* The following areas are a safety zone:

(1) All waters of the Patapsco River, within a 150 foot radius of a fireworks discharge barge in approximate position latitude 39°17′03″ N, longitude 076°36′36″ W, located southeast of Pier 1 Inner Harbor at Baltimore, Maryland;

(2) All waters of the Patapsco River, within a 300 foot radius of a fireworks discharge barge in approximate position latitude 39°16′55″ N, longitude 076°36′17″ W, located southwest of Pier 6 Inner Harbor at Baltimore, Maryland;

(3) All waters of the Patapsco River, within a 600 foot radius of a fireworks discharge barge in approximate position latitude 39°16′38″ N, longitude 076°35′55″ W, located northwest of the Domino Sugar (ASR Group) refinery wharf at Baltimore, Maryland;

(4) All waters of the Patapsco River, within a 500 foot radius of a fireworks discharge barge in approximate position latitude 39°16′42″ N, longitude 076°35′30″ W, located south of the Fells Point Recreation Pier at Baltimore, Maryland;

(5) All waters of the Patapsco River, within a 500 foot radius of a fireworks discharge barge in approximate position latitude 39°16′28″ N, longitude 076°34′59″ W, located north of the North Locust Point Marine Terminal at Baltimore, Maryland;

(6) All waters of the Patapsco River, within a 600 foot radius of a fireworks discharge barge in approximate position latitude 39°16′15″ N, longitude 076°34′38″ W, located south of the Northwest Harbor Turning Basin at Baltimore, Maryland; and

(7) All waters of the Patapsco River, within a 800 foot radius of each of the fireworks discharge barges arranged in a line between approximate position latitude 39°15′47″ N, longitude

076°34′30″ W, and approximate position latitude 39°15′40″ N, longitude 076°34′37″ W, located in the Northwest Harbor (East Channel) 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.T05–0541.

(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 or his designated representative.

(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 or his designated representative 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 at the minimum speed necessary to maintain a safe course 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 periods.* This section will be enforced:

(1) From 7 p.m. to 10 p.m. on September 12, 2014, and

(2) From 7:30 p.m. to 11 p.m. on September 13, 2014, and if necessary due to inclement weather, from 7:30 p.m. to 11 p.m. on September 14, 2014.

Dated: July 10, 2014.

K. C. Kiefer,

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

[FR Doc. 2014–17444 Filed 7–24–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0214]

RIN 1625–AA11

Regulated Navigation Area; South Bristol Gut Bridge Replacement, South Bristol, ME

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Maine Department of Transportation (MEDOT) has requested the Coast Guard to establish a regulated navigation area (RNA) on the navigable waters of The Gut in South Bristol, Maine. Sector Northern New England received notice of a proposed replacement of The Gut Bridge in South Bristol, Maine between Rutherford Island and Bristol Neck. A Bridge Permit was awarded to MEDOT on April 15, 2014 to begin in accordance with plans dated September 24, 2013. This RNA would allow the Coast Guard to enforce speed and wake restrictions and prohibit all vessel traffic through the RNA during bridge replacement operations, both planned and unforeseen, which could pose an imminent hazard to persons and vessels operating in the area. This rule is necessary to provide for the safety of life on the navigable waters during bridge structural repair operations.

DATES: Comments and related material must be received by the Coast Guard on or before August 25, 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 Lieutenant Junior Grade Elizabeth V. Gunn, Waterways Management Division at Coast Guard Sector Northern New England, at 207–767–0398 or email at *Elizabeth.V.Gunn@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. 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–2013–0214] 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–2014–0214) 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 August 1, 2014, using one of the methods specified under **ADDRESSES**. 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

On January 24, 2014, Sector Northern New England received notice of a proposed replacement of The Gut Bridge in South Bristol, Maine between Rutherford Island and Bristol Neck. A Bridge Permit was awarded to Maine Department of Transportation (MEDOT) on April 15, 2014 to begin in accordance with Plans dated September 24, 2013.

MEDOT has held seven public meetings between June 2009 and August 2013. Mariners have expressed no significant concerns.

On November 8, 2013, Public Notice 1–132 was disseminated by the First Coast Guard District Bridge Program Manager. This notice included the official plans being submitted for approval of a bridge permit and solicited comments from the public. Twenty-five comments were received. All comments were in support of burying the existing overhead electrical cables rather than allowing them to remain in place above the water. There were no comments received in opposition of the proposed construction project or potential closures to the channel.

C. Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety. See 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. The purpose of this proposed rule is to ensure the safe transit of vessels in the area, and to protect all persons, vessels, construction crews, and the marine environment during bridge construction operations on The Gut in South Bristol, ME, between Rutherford Island and Bristol Neck.

D. Discussion of Proposed Rule

MEDOT proposes to replace the existing movable bobtail swing bridge over The Gut, which carries State Route 129 from Bristol Neck to Rutherford Island, with a movable trunnion-style lift bridge on the same alignment. The project is necessary to replace a structurally and operationally deficient bridge that has exceeded its useful life. Before demolition of the existing bridge commences, a temporary fixed detour bridge will be constructed on the east side of the existing bridge to provide for vehicular and pedestrian traffic throughout the project. This temporary bridge will not be movable and will have a fixed vertical clearance of 3 feet 11 inches. The existing bridge has a vertical clearance of 4 feet 2 inches when closed. It is proposed that marine traffic will be restricted from the project vicinity during the removal of the existing bridge and construction of the new bridge. This navigational channel closure is expected to last approximately seven months and marine traffic will be detoured around Rutherford Island during this time frame. Transit time around Rutherford Island is approximately 20–60 minutes for mariners.

Further, all closures will be limited to specific hours of the day. Mariners will be advised of all closure dates and times via Local Notice to Mariners and Broadcast Notice to Mariners in advance of closure times.

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.

We expect the economic impact of this rule to be minimal because mariners are able to make a short transit (approximately 20–60 minutes) around Rutherford Island to reach any destination on the other side of The Gut.

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 would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit under the South Bristol Gut Bridge who cannot clear the fixed temporary bridge of 3 feet 11 inches. The impact to these entities would be minimal because mariners are able to make a short transit (approximately 20–60 minutes) around Rutherford Island to reach any destination on the other side of The Gut and the temporary bridge is estimated to only be in place for about seven months.

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 the establishment of an RNA. This rule is 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 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 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. 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.T01–0214 to read as follows:

§ 165.T01–0214 Regulated Navigation Area; South Bristol Gut Bridge Replacement, South Bristol, ME.

(a) *Location.* The following area is a Regulated Navigation Area (RNA): All navigable waters of The Gut in South Bristol, ME, from surface to bottom, within a 300 yard radius of position 43°51′43″ N, 069°33′30″ W.

(b) *Regulations.*

(1) The general regulations contained in 33 CFR 165.10, 165.11, and 165.13 apply within the RNA.

(2) In accordance with the general regulations, entry into or movement within this zone, during periods of enforcement, is prohibited unless authorized by the Captain of the Port Sector Northern New England (COTP).

(3) Persons and vessels may request permission to enter the RNA during periods of enforcement by contacting the COTP or the COTP's on-scene representative on VHF–16 or via phone at 207–767–0303.

(4) During periods of enforcement, entry and movement within the RNA is subject to a ''Slow-No Wake'' speed limit. Vessels may not produce more than a minimum wake and may not attain speeds greater than five knots unless a higher minimum speed is necessary to maintain steerageway.

(5) During periods of enforcement, vessels must comply with all directions given to them by the COTP or the COTP's on-scene representative. The ''on-scene representative'' of the COTP is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on the COTP's behalf. The on-scene representative may be on a Coast Guard vessel; Maine State Police, Maine Marine Patrol or other designated craft; or may be on shore and communicating with vessels via VHF–FM radio or loudhailer. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(6) During periods of enforcement, upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(7) All other relevant regulations, including but not limited to the Rules of the Road (33 CFR 84—Subchapter E, Inland Navigational Rules) remain in effect within the regulated area and must be strictly followed at all times.

(c) *Enforcement Period.* This regulation is enforceable 24 hours a day from 12:01 a.m. on September 1, 2014 until 11:59 p.m. on June 30, 2017.

(1) Prior to commencing or suspending enforcement of this regulation, the COTP will give notice by appropriate means to inform the affected segments of the public, to include dates and times. Such means of notification will include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners.

(2) Violations of this RNA may be reported to the COTP at 207–767–0303 or on VHF-Channel 16.

Dated: July 15, 2014.

L. L. Fagan,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2014–17606 Filed 7–24–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0215]

RIN 1625–AA11

Regulated Navigation Area; Bridge 1 Structural Repairs at Portsmouth Naval Shipyard, Kittery, ME

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Navy has requested the Coast Guard to establish a regulated navigation area (RNA) on the navigable waters of the Piscataqua River surrounding Bridge 1 between Kittery, ME, and Seavey Island, ME. Sector Northern New England received notice of potential bridge work being conducted on Bridge 1 between Kittery, ME, and the Portsmouth Naval Shipyard on Seavey Island from September 1, 2014 through April 30, 2017. This RNA would allow the Coast Guard to enforce speed and wake restrictions and limit vessel traffic through the RNA during operations involving bridge structural repairs, both planned and unforeseen, which could pose an imminent hazard to persons and vessels operating in the area. This rule is necessary to provide for the safety of life on the navigable waters during bridge structural repair operations.

DATES: Comments and related material must be received by the Coast Guard on or before August 25, 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 Lieutenant Junior Grade Elizabeth V. Gunn, Waterways Management Division at Coast Guard Sector Northern New England, at 207–767–0398 or email at *Elizabeth.V.Gunn@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. 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–2013–0215] 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–2014–0215) 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 on or before August 1, 2014 using one of the methods specified under **ADDRESSES**. 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

On September 11, 2013, Sector Northern New England received notice of potential bridge work being conducted on Bridge 1 between Kittery, ME, and the Portsmouth Naval Shipyard on Seavey Island from September 1, 2014 through April 30, 2017. A Construction Approval Letter will be issued once a contractor is awarded the contract to perform needed repairs.

On February 26, 2014, the U. S. Navy posted a notice in the Portsmouth Herald advising the public of the intent to file applications for approval of structural repairs to be made to Bridge 1. No comments or requests for public meeting were made.

C. Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety. See 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. The purpose of this proposed rule is to ensure the safe transit of vessels in the area, and to protect all persons, vessels, and the marine environment during structural repairs made to the Portsmouth Naval Shipyard, Bridge 1.

D. Discussion of Proposed Rule

The Coast Guard is proposing to establish an RNA on the navigable waters of the Piscataqua River surrounding Bridge 1 which spans from Kittery, Maine, to Seavey Island, Maine from September 1, 2014 to April 30, 2017. The Portsmouth Naval Shipyard is the bridge owner and is contracting the structural repairs. This bridge is the main entrance to the Portsmouth Naval Shipyard. The existing bridge is a steel girder structure approximately 300 feet long and 50 feet 7 inches wide. Existing vertical clearance is 7 feet at MLW; the proposed vertical clearance is also 7 feet at MLW. Horizontal clearance is currently 57 feet and the proposed clearance would be 56 feet 6 inches. Existing granite block and steel reinforced abutments and piers will remain in place but will be reinforced with cladding around the abutments. As a result, the horizontal clearance would be reduced by six inches.

This proposed RNA would allow the Captain of the Port Sector Northern New England (COTP) to establish speed and wake restrictions and to prohibit vessel traffic on this portion of the river for limited periods when necessary for the safety of vessels and workers during construction work in the channel. The Coast Guard would enforce a five knot speed limit as well as a ''NO WAKE'' zone and would be able to close the designated area to all vessel traffic under any circumstances, planned or unforeseen, that pose an imminent threat to waterway users or construction operations in the area. At this time, only partial closures of the waterway are anticipated.

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.

We expect the economic impact of this rule to be minimal because this regulated navigation area only requires vessels to reduce speed through a limited portion of the Piscataqua River, therefore causing only a nominal delay to a vessel's transit.

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 would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the vicinity of Bridge 1 from September 1, 2014 to April 30, 2017. These entities would only be required to reduce their speed through a limited portion of the Piscataqua River outside of the main channel.

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 the establishment of an RNA. This rule is 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 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 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. 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.T01–0215 to read as follows:

§ 165.T01–0215 Regulated Navigation Area; Bridge 1 structural repairs at Portsmouth Naval Shipyard, Kittery, ME

(a) *Location.* The following area is a Regulated Navigation Area (RNA): All navigable waters of Piscataqua River between Kittery, ME and Seavey Island, ME, from surface to bottom, within a 300 yard radius of position 44°05′06″ N, 070°44′29″ W.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.10, 165.11, and 165.13 apply within the RNA.

(2) In accordance with the general regulations, entry into or movement within this zone, during periods of enforcement, is prohibited unless authorized by the Captain of the Port Sector Northern New England (COTP).

(3) Persons and vessels may request permission to enter the RNA during periods of enforcement by contacting the COTP or the COTP's on-scene representative on VHF–16 or via phone at 207–767–0303.

(4) During periods of enforcement, entry and movement within the RNA is subject to a ''Slow-No Wake'' speed limit. Vessels may not produce more than a minimum wake and may not attain speeds greater than five knots unless a higher minimum speed is necessary to maintain steerageway.

(5) During periods of enforcement, vessels must comply with all directions given to them by the COTP or the COTP's on-scene representative. The ''on-scene representative'' of the COTP is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on the COTP's behalf. The on-scene representative may be on a Coast Guard

vessel; Maine State Police, Maine Marine Patrol or other designated craft; or may be on shore and communicating with vessels via VHF–FM radio or loudhailer. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(6) During periods of enforcement, upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(7) All other relevant regulations, including but not limited to the Rules of the Road (33 CFR § 84—Subchapter E, Inland Navigational Rules) remain in effect within the regulated area and must be strictly followed at all times.

(c) *Enforcement Period.* This regulation is enforceable 24 hours a day from 12:01 a.m. on September 1, 2014 until 11:59 p.m. on April 30, 2017.

(1) Prior to commencing or suspending enforcement of this regulation, the COTP will give notice by appropriate means to inform the affected segments of the public, to include dates and times. Such means of notification will include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners.

(2) Violations of this RNA may be reported to the COTP at 207–767–0303 or on VHF-Channel 16.

Dated: July 15, 2014.

L. L. Fagan,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2014–17599 Filed 7–24–14; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2011–0888; EPA–R05–OAR–2011–0969; EPA–R05–OAR–2012–0991; EPA–R05–OAR–2013–0435; FRL–9914–21–Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Infrastructure SIP Requirements for the 2008 Lead, 2008 Ozone, 2010 NO_2, and 2010 SO_2 NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of state implementation plan (SIP) submissions from Ohio regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2008 lead (Pb), 2008 ozone, 2010 nitrogen dioxide (NO_2), and 2010 sulfur dioxide (SO_2) National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

DATES: Comments must be received on or before August 25, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2011–0888 (2008 Pb infrastructure elements), EPA–R05–OAR–2011–0969 (2008 ozone infrastructure elements), EPA–R05–OAR–2012–0991 (2010 NO_2 infrastructure elements), or EPA–R05–OAR–2013–0435 (2010 SO_2 infrastructure elements) by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: aburano.douglas@epa.gov.*
3. *Fax:* (312) 408–2279.
4. *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID. EPA–R05–OAR–2011–0888 (2008 Pb infrastructure elements), EPA–R05–OAR–2011–0969 (2008 ozone infrastructure elements), EPA–R05–OAR–2012–0991 (2010 NO_2 infrastructure elements), or EPA–R05–OAR–2013–0435 (2010 SO_2 infrastructure elements). EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Andy Chang, Environmental Engineer, at (312) 886–0258 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Andy Chang, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0258, *chang.andy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?
II. What is the background of these SIP submissions?
A. What state SIP submissions does this rulemaking address?
B. Why did the state make these SIP submissions?
C. What is the scope of this rulemaking?

III. What guidance is EPA using to evaluate these SIP submissions?
IV. What is the result of EPA's review of these SIP submissions?
A. Section 110(a)(2)(A)—Emission Limits and Other Control Measures
B. Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System
C. Section 110(a)(2)(C)—Program for Enforcement of Control Measures; PSD
D. Section 110(a)(2)(D)—Interstate Transport
E. Section 110(a)(2)(E)—Adequate Resources
F. Section 110(a)(2)(F)—Stationary Source Monitoring System
G. Section 110(a)(2)(G)—Emergency Powers
H. Section 110(a)(2)(H)—Future SIP Revisions
I. Section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions under Part D
J. Section 110(a)(2)(J)—Consultation With Government Officials; Public Notifications; PSD; Visibility Protection
K. Section 110(a)(2)(K)—Air Quality Modeling/Data
L. Section 110(a)(2)(L)—Permitting Fees
M. Section 110(a)(2)(M)—Consultation/Participation by Affected Local Entities
V. What action is EPA taking?
VI. Statutory and Executive Order Reviews

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. What is the background of these SIP submissions?

A. What state SIP submissions does this rulemaking address?

This rulemaking addresses submissions from the Ohio Environmental Protection Agency (Ohio EPA). The state submitted its infrastructure SIP for each NAAQS on the following dates: 2008 Pb—October 12, 2011, and supplemented on June 7, 2013; 2008 ozone—December 27, 2012, and supplemented on June 7, 2013; 2010 NO_2—February 8, 2013, and supplemented on February 25, 2013, and June 7, 2013; and, 2010 SO_2—June 7, 2013.

B. Why did the state make these SIP submissions?

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for the NAAQS already meet those requirements.

EPA highlighted this statutory requirement in an October 2, 2007, guidance document entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (2007 Memo). On September 25, 2009, EPA issued an additional guidance document pertaining to the 2006 $PM_{2.5}$ [1] NAAQS entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)'' (2009 Memo), followed by the October 14, 2011, ''Guidance on Infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)'' (2011 Memo). Most recently, EPA issued ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)'' on September 13, 2013 (2013 Memo).

The SIP submissions referenced in this rulemaking pertain to the applicable requirements of section 110(a)(1) and (2), and address the 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. To the extent that the prevention of significant deterioration (PSD) program is comprehensive and non-NAAQS specific, a narrow evaluation of other NAAQS, such as the 1997 8-hour ozone and 2006 $PM_{2.5}$ NAAQS will be included in the appropriate sections.

C. What is the scope of this rulemaking?

EPA is acting upon the SIP submissions from Ohio that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA, ''regional haze SIP'' submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review (NNSR) permit program submissions to address the permit requirements of CAA, title I, part D.

This rulemaking will not cover three substantive areas that are not integral to acting on a state's infrastructure SIP submission: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by

[1] $PM_{2.5}$ refers to particulate matter of 2.5 microns or less in diameter, oftentimes referred to as ''fine'' particles.

EPA, that may be contrary to the CAA (collectively referenced as ''director's discretion''); and, (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). Instead, EPA has the authority to address each one of these substantive areas in separate rulemaking. A detailed history, interpretation, and rationale related to infrastructure SIP requirements can be found in EPA's May 13, 2014, proposed rule entitled, ''Infrastructure SIP Requirements for the 2008 Lead NAAQS'' in the section, ''What is the scope of this rulemaking?'' (*see* 79 FR 27241 at 27242–27245).

III. What guidance is EPA using to evaluate these SIP submissions?

EPA's guidance for these infrastructure SIP submissions is embodied in the 2007 Memo. Specifically, attachment A of the 2007 Memo (Required Section 110 SIP Elements) identifies the statutory elements that states need to submit in order to satisfy the requirements for an infrastructure SIP submission. The 2009 Memo was issued to provide additional guidance for certain elements to meet the requirements of section 110(a)(1) and (2) of the CAA, and the 2011 Memo provides guidance specific to the 2008 Pb NAAQS. Lastly, the 2013 Memo identifies and further clarifies aspects of infrastructure SIPs that are not NAAQS specific.

IV. What is the result of EPA's review of these SIP submissions?

As noted in the 2011 Memo and reiterated in the 2013 Memo, pursuant to section 110(a), states must provide reasonable notice and opportunity for public hearing for all infrastructure SIP submissions. Ohio EPA provided the opportunity for public comment for each NAAQS that ended on the following dates: 2008 Pb—October 11, 2011; 2008 ozone—December 21, 2012; 2010 NO_2—February 19, 2013; and, 2010 SO_2—June 5, 2013. The state did not receive any comments during the comment periods.

EPA is also soliciting comment on our evaluation of the state's infrastructure SIP submissions in this notice of proposed rulemaking. Ohio provided detailed synopses of how various components of its SIP meet each of the requirements in section 110(a)(2) for the 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS, as applicable. The following review evaluates the state's submissions.

A. Section 110(a)(2)(A)—Emission Limits and Other Control Measures

This section requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. However, EPA has long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning requirements are due.[2] In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

Ohio Revised Code (ORC) 3704.03 provides the Director of Ohio EPA with the authority to develop rules and regulations necessary to meet state and Federal ambient air quality standards. Ohio also has SIP approved provisions for specific pollutants. For example, Ohio Administrative Code (OAC) 3745–71 regulates provides for the direct regulation of Pb emissions, and OAC 3745–18 provides for the direct regulation of SO_2 emissions. EPA proposes that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

As previously noted, EPA is not proposing at this time to approve or disapprove any existing state provisions or rules related to SSM or director's discretion in the context of section 110(a)(2)(A).

B. Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System

This section requires SIPs to include provisions to provide for establishing and operating ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request. This review of the annual monitoring plan includes EPA's determination that the state: (i) Monitors air quality at appropriate locations throughout the state using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA's Air Quality System (AQS) in a timely manner; and, (iii) provides EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.

Ohio EPA continues to operate a monitoring network, and EPA approved the state's 2014 Annual Air Monitoring Network Plan for Pb, ozone, NO_2, and SO_2 on October 30, 2013. Furthermore, Ohio EPA populates AQS with air quality monitoring data in a timely manner, and provides EPA with prior notification when considering a change to its monitoring network or plan. EPA proposes that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

C. Section 110(a)(2)(C)—Program for Enforcement of Control Measures; PSD

States are required to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet NSR requirements under PSD and NNSR programs. Part C of the CAA (sections 160–169B) addresses PSD, while part D of the CAA (sections 171–193) addresses NNSR requirements.

The evaluation of each state's submission addressing the infrastructure SIP requirements of section 110(a)(2)(C) covers: (i) Enforcement of SIP measures; (ii) PSD program for the 2008 Pb NAAQS; (iii) PSD provisions that explicitly identify oxides of nitrogen (NO_X) as a precursor to ozone in the PSD program; (iv) identification of precursors to $PM_{2.5}$ and the identification of $PM_{2.5}$ and PM_{10}[3] condensables in the PSD program; (v) $PM_{2.5}$ increments in the PSD program; and (vi) greenhouse gas (GHG) permitting and the ''Tailoring Rule.''[4]

In this rulemaking, we are evaluating Ohio EPA's submissions with respect to the enforcement of SIP measures. However, we are not taking action on the state's satisfaction of the various PSD and GHG permitting requirements.

[2] See, *e.g.,* EPA's 73 FR 66964 at 67034, final rule on ''National Ambient Air Quality Standards for Lead.''

[3] PM_{10} refers to particles with diameters between 2.5 and 10 microns, oftentimes referred to as ''coarse'' particles.

[4] In EPA's April 28, 2011, proposed rulemaking for infrastructure SIPS for the 1997 ozone and $PM_{2.5}$ NAAQS, we stated that each state's PSD program must meet applicable requirements for evaluation of all regulated NSR pollutants in PSD permits (*see* 76 FR 23757 at 23760). This view was reiterated in EPA's August 2, 2012, proposed rulemaking for infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS (*see* 77 FR 45992 at 45998). In other words, if a state lacks provisions needed to adequately address Pb, NO_X as a precursor to ozone, $PM_{2.5}$ precursors, $PM_{2.5}$ and PM_{10} condensables, $PM_{2.5}$ increments, or the Federal GHG permitting thresholds, the provisions of section 110(a)(2)(C) requiring a suitable PSD permitting program must be considered not to be met irrespective of the NAAQS that triggered the requirement to submit an infrastructure SIP, including the 2008 Pb NAAQS.

Instead, EPA will evaluate Ohio's compliance with each of these requirements in a separate rulemaking.

Ohio EPA staffs and implements an enforcement program. ORC 3704.03 provides the Director of Ohio EPA with the authority to implement the enforcement program as well as NSR provisions within OAC 3745–31. Ohio EPA compiles all air pollution control enforcement settlements in the state, and makes them available for public review on its Web site. EPA proposes that Ohio has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

For the purposes of the 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS infrastructure SIPs, EPA reiterates that NSR reform regulations are not in the scope of these actions. Therefore, we are not taking action on existing NSR reform regulations for Ohio. To address the pre-construction regulation of the modification and construction of minor stationary sources and minor modifications of major stationary sources, an infrastructure SIP submission should identify the existing EPA-approved SIP provisions and/or include new provisions that govern the minor source pre-construction program that regulates emissions of the relevant NAAQS pollutants. EPA approved Ohio's minor NSR program on January 22, 2003 (68 FR 2909). Since this date, Ohio EPA and EPA have relied on the existing minor NSR program to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

Certain sub-elements in this section overlap with elements of section 110(a)(2)(D)(i) and section 110(a)(2)(J). These links will be discussed in the appropriate areas below.

D. Section 110(a)(2)(D)—Interstate Transport

Section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQS in another state.

With respect to the 2008 Pb NAAQS, the 2011 Memo notes that the physical properties of Pb prevent it from experiencing the same travel or formation phenomena as $PM_{2.5}$ or ozone. Specifically, there is a sharp decrease in Pb concentrations as the distance from a Pb source increases. Accordingly, it may be possible for a source in a state to emit Pb at a location and in such quantities that contribute significantly to nonattainment in, or interference with maintenance by, any other state. However, EPA anticipates that this would be a rare situation, *e.g.,* sources emitting large quantities of Pb are in close proximity to state boundaries. The 2011 Memo suggests that the applicable interstate transport requirements of section 110(a)(2)(D)(i)(I) can be met through a state's assessment as to whether or not emissions from Pb sources located in close proximity to its borders have emissions that impact a neighboring state such that they contribute significantly to nonattainment or interfere with maintenance in that state. One way that a state's conclusion could be supported is by the technical support documents used for initial area designations for Pb.

Ohio's infrastructure SIP submission for the 2008 Pb NAAQS notes that there are three areas designated as nonattainment for the 2008 Pb NAAQS located in portions of Cuyahoga County, Fulton County, and Logan County (*see* 75 FR 71033). None of these areas are located in close proximity to any of Ohio's border, and Ohio EPA provided a map of Pb-emitting sources in the state showing that sources emitting 0.5 tpy or above are not in close proximity to any state borders. EPA's final technical support documents for the nonattainment areas located in Ohio support the conclusion that the ambient concentration of Pb are not expected to exceed the NAAQS outside of the nonattainment boundaries. Furthermore, EPA does not believe that the elevated levels of ambient Pb concentrations in Cuyahoga County, Fulton County, or Logan County (or emissions from any other county) would cause or contribute to a violation of the 2008 Pb NAAQS in a neighboring state or create a situation in a neighboring state where maintenance of the 2008 Pb NAAQS was not possible. Therefore, EPA proposes that Ohio has met this set of requirements related to section 110(a)(2)(D)(i)(I) for the 2008 Pb NAAQS.

On February 17, 2012, EPA promulgated designations for the 2010 NO_2 NAAQS, stating, ''The EPA is designating areas as ''unclassifiable/attainment'' to mean that available information does not indicate that the air quality in these areas exceeds the 2010 NO_2 NAAQS'' (*see* 77 FR 9532). For comparison purposes, EPA examined the design values [5] from NO_2 monitors in Ohio and surrounding states. The highest design value based on data collected between 2010 and 2012 was 65 ppb at a monitor in Philadelphia, Pennsylvania. EPA believes that with the continued implementation of the state's SIP-approved PSD and NNSR regulations found in OAC 3745–31, these low monitored values of NO_2 will continue in and around Ohio. In other words, the NO_2 emissions from Ohio are not expected to cause or contribute to a violation of the 2010 NO_2 NAAQS in another state, and these emissions not likely to interfere with the maintenance of the 2010 NO_2 NAAQS in another state. Therefore, EPA proposes that Ohio has met this set of requirements related to section 110(a)(2)(D)(i)(I) for the 2010 NO_2 NAAQS.

In this rulemaking, EPA is not proposing to approve or disapprove Ohio's compliance with section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone and 2010 SO_2 NAAQS. Instead, we will address the state's satisfaction of these requirements with respect to these two NAAQS in a separate rulemaking.

Section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality or to protect visibility in another state. As previously noted, EPA will evaluate Ohio's compliance with the various PSD and GHG infrastructure SIP requirements in a separate rulemaking.

States also have an obligation to ensure that sources located in nonattainment areas do not interfere with a neighboring state's PSD program. One way that this requirement can be satisfied is through an NNSR program consistent with the CAA that addresses any pollutants for which there is a designated nonattainment area within the state.

Ohio's EPA-approved NNSR regulations can be found in OAC 3745–31–21; these regulations contain provisions for how the state must treat and control sources in nonattainment areas, consistent with 40 CFR 51.165, or appendix S to 40 CFR 51. In this rulemaking, EPA is taking no action on this set of requirements under section 110(a)(2)(D)(i)(II). Instead, we will address Ohio's satisfaction of these provisions in a separate rulemaking.

With regard to the applicable requirements for visibility protection of

[5] The level of the 2010 NO_2 NAAQS for is 100 parts per billion (ppb) and the form is the 3-year average of the annual 98th percentile of the daily 1-hour maximum. For the most recent design values, see *http://www.epa.gov/airtrends/values.html.*

section 110(a)(2)(D)(i)(II), states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). The 2009 Memo, the 2011 Memo, and 2013 Memo state that these requirements can be satisfied by an approved SIP addressing reasonably attributable visibility impairment, if required, or an approved SIP addressing regional haze.

Alternatively, the 2011 Memo states that most, if not all, Pb stationary sources are located at distances from Class I areas such that visibility impacts would be negligible. Although Pb can be a component of coarse and fine particles, it generally comprises a small fraction. When EPA evaluated the extent that Pb could impact visibility, Pb-related visibility impacts were found to be insignificant (e.g., less than 0.10%). Therefore, EPA anticipates that Pb emissions will contribute only negligibly to visibility impairment at Class I areas, and states can include an assessment as to this assumption in their submissions. The closest Class I area (Otter Creek Wilderness, West Virginia) is located approximately 150 miles from the Ohio-West Virginia border, and EPA anticipates that this area (or any other Class I area) would experience less than 0.10% of adverse visibility impact from any Pb-emitting source in Ohio. As previously noted, EPA's final technical support documents for the nonattainment areas located in Ohio support the conclusion that the ambient concentration of Pb are not expected to exceed the NAAQS outside of the nonattainment boundaries. EPA proposes that Ohio has met this set of infrastructure SIP requirements of 110(a)(2)(D)(i)(II) for the 2008 Pb NAAQS.

In this rulemaking, EPA is not proposing to approve or disapprove Ohio's satisfaction of the visibility protection requirements of section 110(a)(2)(D)(i)(II) for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQs. Instead, EPA will evaluate Ohio's compliance with these requirements in a separate rulemaking.

Section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 126 and section 115 (relating to interstate and international pollution abatement, respectively).

Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources. A lack of such a requirement in state rules would be grounds for disapproval of this element.

Ohio has provisions in its EPA-approved PSD program that require new or modified sources to notify neighboring states of potential negative air quality impacts. The state's submissions reference these provisions as being adequate to meet the requirements of section 126(a). EPA proposes that Ohio has met the infrastructure SIP requirements of section 126(a) with respect to the 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. Ohio has no obligations under any other section of section 126.

The infrastructure SIP submissions from Ohio affirm that it does not have pending obligations under section 115. Therefore, EPA is proposing that Ohio has the applicable infrastructure SIP requirements of section 110(a)(2)(D)(ii) related to section 115 of the CAA (international pollution abatement) for the 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

E. Section 110(a)(2)(E)—Adequate Resources

This section requires each state to provide for adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues. Section 110(a)(2)(E)(ii) also requires each state to comply with the requirements respecting state boards under section 128.

Sub-element 1: Adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues. At the time of each of its submissions, Ohio EPA included its most recent biennial budget with its submittal, which details the funding sources and program priorities addressing the required SIP programs. Ohio EPA has routinely demonstrated that it retains adequate personnel to administer its air quality management program, and Ohio's environmental performance partnership agreement with EPA documents certain funding and personnel levels at Ohio EPA. As discussed in previous sections, ORC 3704.03 provides the legal authority under state law to carry out the SIP. EPA proposes that Ohio has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

Sub-element 2: State board requirements under section 128 of the CAA. Section 110(a)(2)(E) also requires each SIP to contain provisions that comply with the state board requirements of section 128 of the CAA. That provision contains two explicit requirements: (i) That any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter, and (ii) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

On June 7, 2013, Ohio EPA provided a supplemental submission to its 2008 Pb, 2008 ozone, and 2010 NO_2 as part of its infrastructure SIP submission for the 2010 SO_2 NAAQS clarifying that the state does not have a board that has the authority to approve enforcement orders or permitting actions as outlined in section 128(a)(1) of the CAA; instead, this authority rests with the Director of Ohio EPA. Therefore, section 128(a)(1) of the CAA is not applicable in Ohio.

Under section 128(a)(2), the head of the executive agency with the power to approve enforcement orders or permits must adequately disclose any potential conflicts of interest. In its June 7, 2013, submission, Ohio EPA notes that EPA has previously approved provisions into Ohio's SIP addressing these requirements (*see* 46 FR 57490). Notably, ORC 102: Public Officers—Ethics contains provisions that require the Director of Ohio EPA (and his/her delegate) to file an annual statement with the ethics committee including potential conflicts of interest; furthermore, this annual filing is subject to public inspection. Therefore, EPA proposes that Ohio has met the applicable infrastructure SIP requirements for this section of 110(a)(2)(E) for the 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

F. Section 110(a)(2)(F)—Stationary Source Monitoring System

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The state plan shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each state agency with any emission limitations or standards established pursuant to this chapter. Lastly, the

reports shall be available at reasonable times for public inspection.

Ohio EPA district offices and local air agencies are currently required to witness 50% of all source testing and review 100% of all tests. EPA-approved rules in OAC 3745–15 contain provisions for the submission of emissions reports, and OAC 3745–77 and OAC 3745–31 provide requirements for recordkeeping by sources. EPA recognizes that Ohio has routinely submitted quality assured analyses and data for publication, and therefore proposes that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

G. Section 110(a)(2)(G)—Emergency Powers

This section requires that a plan provide for authority that is analogous to what is provided in section 303 of the CAA, and adequate contingency plans to implement such authority. The 2013 Memo states that infrastructure SIP submissions should specify authority, rested in an appropriate official, to restrain any source from causing or contributing to emissions which present an imminent and substantial endangerment to public health or welfare, or the environment.

The regulations at OAC 3745–25 contain provisions which allow the Director of Ohio EPA to determine the conditions that comprise air pollution alerts, warnings, and emergencies. Moreover, the rules contained in OAC 3745–25 provide the requirement to implement emergency action plans in the event of an air quality alert or higher. EPA proposes that Ohio has met the applicable infrastructure SIP requirements for this portion of section 110(a)(2)(G) with respect to the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

Specific to Pb as indicated in the 2011 Memo, EPA believes that the central components of a contingency plan for the 2008 Pb NAAQS would be to reduce emissions from the source at issue and to communicate with the public as needed. Where a state believes, based on its inventory of Pb sources and historic monitoring data that it does not need a more specific contingency plan beyond having authority to restrain any source from causing or contributing to an imminent and substantial endangerment, then the state could provide such a detailed rationale in place of a specific contingency plan.

EPA has reviewed historic data at Pb monitoring sites throughout Ohio, and believes that a specific contingency plan beyond having authority to restrain any source from causing or contributing to an imminent and substantial endangerment is not necessary at this time. For example, one way to quantify the possibility of imminent and substantial endangerment in this context would be a daily monitored value for Pb that could by itself cause a violation of the 2008 Pb NAAQS.[6] EPA has reviewed data from 2011–2013 (the most recent three calendar year block of complete data) and observes that no such daily monitored value exists.

As described in the section detailing interstate transport of Pb, EPA does not anticipate other areas in Ohio needing specific contingency measures due to low Pb emissions. In conjunction with OAC 3745–25 as described above, EPA proposes that Ohio has met the applicable infrastructure SIP requirements of section 110(a)(2)(G) related to contingency measures for the 2008 Pb NAAQS.

H. Section 110(a)(2)(H)—Future SIP Revisions

This section requires states to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or to an EPA finding that the SIP is substantially inadequate.

As previously mentioned, ORC 3704.03 provides the Director of Ohio EPA with the authority to develop rules and regulations necessary to meet ambient air quality standards in all areas in the state as expeditiously as practicable, but not later than any deadlines applicable under the CAA. ORC 3704.03 also provides the Director of Ohio EPA with the authority to develop programs for the prevention, and abatement of air pollution. EPA proposes that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(H) with respect to the 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

I. Section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D

The CAA requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D relates to nonattainment areas.

EPA has determined that section 110(a)(2)(I) is not applicable to the infrastructure SIP process. Instead, EPA takes action on part D attainment plans through separate processes.

J. Section 110(a)(2)(J)—Consultation With Government Officials; Public Notifications; PSD; Visibility Protection

The evaluation of the submissions from Ohio with respect to the requirements of section 110(a)(2)(J) are described below.

Sub-element 1: Consultation with government officials. States must provide a process for consultation with local governments and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements.

Ohio EPA actively participates in the regional planning efforts that include both the state rule developers as well as representatives from the FLMs and other affected stakeholders. The FLMs are also included in Ohio EPA's interested party lists which provide announcements of draft and proposed rule packages. OAC 3745–31–06 is a SIP-approved rule which requires notification and the availability of public participation related to NSR actions; notification is provided to the general public, executives of the city or county where the source is located, other state or local air pollution control agencies, regional land use planning agencies, and FLMs. OAC 3704.03(K) is a SIP-approved rule that which requires giving reasonable public notice and conducting public hearings on any plans for the prevention, control, and abatement of air pollution that the Director of Ohio EPA is required to submit to EPA. Additionally, Ohio is an active member of the Lake Michigan Air Director's Consortium (LADCO). Therefore, EPA proposes that Ohio has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

Sub-element 2: Public notification. Section 110(a)(2)(J) also requires states to notify the public if NAAQS are exceeded in an area and must enhance public awareness of measures that can be taken to prevent exceedances.

Ohio EPA maintains portions of its Web site specifically for issues related to the 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.[7] The information contained in these pages includes background on the health effects of each of these pollutants, the areas of most concern, and the strategies that the state has been taking to address the elevated levels, if any, of the pollutants. Ohio EPA also actively populates EPA's AIRNOW program, and

[6] See appendix R to 40 CFR part 50 for data handling conventions and computations necessary for determining when the NAAQS are met.

[7] See *http://www.epa.ohio.gov/dapc/sip/sip.aspx.*

prepares annual data reports from its complete monitoring network. EPA proposes that Ohio has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

Sub-element 3: PSD. States must meet applicable requirements of section 110(a)(2)(C) related to PSD. Ohio's PSD program in the context of infrastructure SIPs has already been discussed in the paragraphs addressing section 110(a)(2)(C) and 110(a)(2)(D)(i)(II). EPA will evaluate Ohio's compliance with the various PSD and GHG infrastructure SIP requirements in a separate rulemaking.

Sub-element 4: Visibility protection. With regard to the applicable requirements for visibility protection, states are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there is no new visibility obligation ''triggered'' under section 110(a)(2)(J) when a new NAAQS becomes effective. In other words, the visibility protection requirements of section 110(a)(2)(J) are not germane to infrastructure SIPs for the 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

K. Section 110(a)(2)(K)—Air Quality Modeling/Data

SIPs must provide for performing air quality modeling for predicting effects on air quality of emissions from any NAAQS pollutant and submission of such data to EPA upon request.

Ohio EPA reviews the potential impact of major and some minor new sources, consistent with 40 CFR part 51, appendix W, ''Guidelines on Air Quality Models,'' as well as Ohio EPA Engineering Guide 69. These modeling data are available to EPA upon request. The regulatory requirements related to PSD modeling can be found in SIP-approved rule OAC 3745–31–18, and Ohio's authority to require modeling conducted by other entities, e.g., applicants, and the state's authority to perform modeling for attainment demonstrations can be found in SIP-approved ORC 3704.03. The state also collaborates with LADCO and EPA in order to perform modeling. EPA proposes that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

L. Section 110(a)(2)(L)—Permitting Fees

This section requires SIPs to mandate each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit.

Ohio EPA implements and operates the title V permit program, which EPA approved on August 15, 1995 (60 FR 42045); revisions to the program were approved on November 20, 2003 (68 FR 65401). Additional rules that contain the provisions, requirements, and structures associated with the costs for reviewing, approving, implementing, and enforcing various types of permits can be found in ORC 3745.11. EPA proposes that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(L) for the 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

M. Section 110(a)(2)(M)—Consultation/Participation by Affected Local Entities

States must consult with and allow participation from local political subdivisions affected by the SIP.

Ohio EPA follows approved procedures for allowing public participation, consistent with OAC 3745–47, which is part of the approved SIP. Consultation with local governments is authorized through ORC 3704.03(B). Ohio EPA provides a public participation process for all stakeholders that includes a minimum of a 30-day comment period and a public hearing for all SIP related actions. EPA proposes that Ohio has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS.

V. What action is EPA taking?

EPA is proposing to approve most elements of submissions from Ohio EPA certifying that its current SIP is sufficient to meet the required infrastructure elements under sections 110(a)(1) and (2) for the 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. EPA's proposed actions for the state's satisfaction of infrastructure SIP requirements, by element of section 110(a)(2) and NAAQS, are contained in the table below.

Element	2008 Pb	2008 Ozone	2010 NO_2	2010 SO_2
(A): Emission limits and other control measures	A	A	A	A
(B): Ambient air quality monitoring and data system	A	A	A	A
(C)1: Enforcement of SIP measures	A	A	A	A
(C)2: PSD program for Pb	NA	NA	NA	NA
(C)3: NO_X as a precursor to ozone for PSD	NA	NA	NA	NA
(C)4: $PM_{2.5}$ Precursors/$PM_{2.5}$ and PM_{10} condensables for PSD	NA	NA	NA	NA
(C)5: $PM_{2.5}$ Increments	NA	NA	NA	NA
(C)5: GHG permitting thresholds in PSD regulations	NA	NA	NA	NA
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS	A	NA	A	NA
(D)2: PSD	NA	NA	NA	NA
(D)3: Visibility Protection	A	NA	NA	NA
(D)4: Interstate Pollution Abatement	A	A	A	A
(D)5: International Pollution Abatement	A	A	A	A
(E): Adequate resources	A	A	A	A
(E): State boards	A	A	A	A
(F): Stationary source monitoring system	A	A	A	A
(G): Emergency power	A	A	A	A
(H): Future SIP revisions	A	A	A	A
(I): Nonattainment area plan or plan revisions under part D	NA	NA	NA	NA
(J)1: Consultation with government officials	A	A	A	A
(J)2: Public notification	A	A	A	A
(J)3: PSD	NA	NA	NA	NA
(J)4: Visibility protection	+	+	+	+
(K): Air quality modeling and data	A	A	A	A
(L): Permitting fees	A	A	A	A

Element	2008 Pb	2008 Ozone	2010 NO_2	2010 SO_2
(M): Consultation and participation by affected local entities	A	A	A	A

In the above table, the key is as follows:

A Approve
NA No Action/Separate Rulemaking
+ Not germane to infrastructure SIPs

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Lead, Ozone, Nitrogen dioxide, Sulfur dioxide, Reporting and recordkeeping requirements.

Dated: July 14, 2014.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2014–17591 Filed 7–24–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2014–0343: FRL -9914–34-Region 10]

Approval and Promulgation of Implementation Plans; Washington: Nonattainment New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Washington State Implementation Plan (SIP) that were submitted by the Department of Ecology (Ecology) on January 27, 2014. These revisions update the preconstruction permitting regulations for large industrial (major source) facilities located in designated nonattainment areas, referred to as the Nonattainment New Source Review (major nonattainment NSR or major NNSR) program. While these revisions update Ecology's major NNSR program generally, the most significant change is the incorporation of regulations to implement major NNSR for fine particulate matter, particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$). The major NNSR program is designed to ensure that major stationary sources of air pollution are constructed or modified in a manner that is consistent with attainment and maintenance of the National Ambient Air Quality Standards (NAAQS).

DATES: Comments must be received on or before August 25, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2014–0343, by any of the following methods:

A. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

B. *Mail:* Jeff Hunt, EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.

C. *Email: R10-Public_Comments@epa.gov.*

D. *Hand Delivery:* EPA Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: Jeff Hunt, Office of Air, Waste and Toxics, AWT—107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2014–0343. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your

comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA98101.

FOR FURTHER INFORMATION CONTACT: For information on the major NNSR permitting program please contact Donna Deneen at (206) 553–6706 or *deneen.donna@epa.gov*. For information on the Washington SIP in general or the Tacoma-Pierce County $PM_{2.5}$ nonattainment area, please contact Jeff Hunt at (206) 553–0256, *hunt.jeff@epa.gov,* or by using the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us'' or ''our'' are used, it is intended to refer to the EPA.

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I. Purpose of Proposed Action

The EPA is proposing approval of revisions to Washington's SIP related to major NNSR that were submitted by Ecology on January 27, 2014. The revisions update the general air quality regulations that apply to sources within Ecology's jurisdiction, including the minor new source review permitting program; regulations covering the major source Prevention of Significant Deterioration (PSD); and regulations covering major NNSR. On July 10, 2014 (79 FR 39351) the EPA proposed to approve the general provisions contained in Chapter 173–400 of the Washington Administrative Code (WAC) that apply to all sources under Ecology's permitting jurisdiction, as well as the minor source permitting program. In that first proposal, the EPA stated that we would act separately on the major source permitting programs. In this proposal, the second in the series, the EPA is proposing to approve the major source NNSR regulations contained in WAC 173–400–800 through 173–400–860, as well as other parts of Chapter 173–400 WAC that support major NNSR. In a future proposal, the third in the series, the EPA will act on the remainder of Ecology's January 27, 2014 submittal, covering the Prevention of Significant Deterioration (PSD) and visibility permitting requirements for major stationary sources.

II. Background for Proposed Action

On July 18, 1997, the EPA revised the NAAQS for particulate matter to add new standards for fine particles, using $PM_{2.5}$ as the indicator. Previously, the EPA used PM_{10} (inhalable particles smaller than or equal to 10 micrometers in diameter) as the indicator for the particulate matter NAAQS. The EPA established health-based (primary) annual and 24-hour standards for $PM_{2.5}$, setting an annual standard at a level of 15 micrograms per cubic meter ($\mu g/m^3$) and a 24-hour standard at a level of 65 $\mu g/m^3$ (62 FR 38652). At the time the 1997 primary standards were established, the EPA also established welfare-based (secondary) standards identical to the primary standards. The secondary standards are designed to protect against major environmental effects of $PM_{2.5}$, such as visibility impairment and materials damage. Washington had no areas violating the annual or 24-hour 1997 $PM_{2.5}$ NAAQS at the time the standards were promulgated.

On October 17, 2006, the EPA revised the primary and secondary $PM_{2.5}$ NAAQS (71 FR 61236). In that rulemaking, the EPA reduced the 24-hour $PM_{2.5}$ NAAQS to 35 $\mu g/m^3$ and retained the existing annual $PM_{2.5}$ NAAQS of 15 $\mu g/m^3$. In 2009, as a result of the change in the 24-hour $PM_{2.5}$ NAAQS from 65 $\mu g/m^3$ to 35 $\mu g/m^3$, the EPA designated part of Pierce County as nonattainment based on 2006–2008 monitoring data (74 FR 58688, November 13, 2009). The Tacoma-Pierce County $PM_{2.5}$ nonattainment area covers most of the greater Tacoma area and the surrounding communities within Pierce County's urban growth area west of State Route 167 and is currently the only nonattainment area in Washington State. Finally, on December 14, 2012, the EPA reduced the primary annual $PM_{2.5}$ NAAQS to 12 $\mu g/m^3$ (78 FR 3086). However, the reduced annual $PM_{2.5}$ NAAQS will likely have minimal impact on Washington or the Tacoma-Pierce County $PM_{2.5}$ nonattainment area because the State's $PM_{2.5}$ nonattainment problems are generally dominated by short-term 24-hour spikes associated with residential wood combustion during winter inversions, when stagnant air is trapped in low lying areas.

On May 16, 2008, the EPA finalized a rule to implement the 1997 $PM_{2.5}$ NAAQS, including changes to the New Source Review (NSR) program (the NSR $PM_{2.5}$ Rule, 73 FR 28321). The 2008 NSR $PM_{2.5}$ Rule revised the NSR program requirements to establish a framework for implementing preconstruction permit review for the $PM_{2.5}$ NAAQS in both attainment and nonattainment areas. The 2008 NSR $PM_{2.5}$ Rule also established the following NSR requirements to implement the $PM_{2.5}$ NAAQS: (1) Required NSR permits to address directly emitted $PM_{2.5}$ and precursor pollutants; (2) established significant emission rates for direct $PM_{2.5}$ and precursor pollutants, including sulfur dioxide (SO_2) and oxides of nitrogen (NO_X); (3) established $PM_{2.5}$ emission offsets for nonattainment areas; and (4) required states to account for gases that condense to form particles (condensables) in $PM_{2.5}$ emission limits. The Ecology regulations, submitted to the EPA on January 27, 2014, were revised to address the requirements of the 2008

NSR $PM_{2.5}$ rule, as well as to provide general updates that apply to all NAAQS.

III. Effect of the January 4, 2013 DC Circuit Decision Regarding $PM_{2.5}$

Implementation Under Subpart 4

On January 4, 2013, the U.S. Court of Appeals for the District of Columbia Circuit, in *Natural Resources Defense Council* v. *EPA*[1] issued a decision that remanded the EPA's 2007 and 2008 rules implementing the 1997 $PM_{2.5}$ NAAQS. Relevant here, the 2008 NSR $PM_{2.5}$ Rule promulgated NSR requirements for implementation of $PM_{2.5}$ in both nonattainment areas and attainment/unclassifiable areas. The Court found that the EPA erred in implementing the $PM_{2.5}$ NAAQS in these rules solely pursuant to the general implementation provisions of subpart 1 of part D of title I of the Clean Air Act, rather than pursuant to the additional implementation provisions specific to particulate matter nonattainment areas in subpart 4. The Court ordered the EPA to ''repromulgate these rules pursuant to Subpart 4 consistent with this opinion.'' *Id.* at 437.

On June 2, 2014, the EPA published a final rulemaking, *Identification of Nonattainment Classification and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) and 2006 $PM_{2.5}$ NAAQS,* that begins to address the remand (79 FR 31566). The final rule classified all existing $PM_{2.5}$ nonattainment areas as ''Moderate'' nonattainment areas and set a deadline of December 31, 2014, for states to submit any SIP submissions, including nonattainment NSR SIPs, that may be necessary to satisfy the requirements of subpart 4, part D, title I of the CAA with respect to $PM_{2.5}$ nonattainment areas.

In a separate rulemaking process, the EPA is evaluating the requirements of subpart 4 as they pertain to nonattainment NSR for $PM_{2.5}$ emissions. In particular, subpart 4 includes section 189(e) of the CAA, which requires the control of major stationary sources of PM_{10} precursors ''except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels which exceed the standard in the area.'' Under the Court's decision in *NRDC,* section 189(e) of the CAA also applies to $PM_{2.5}$.

Ecology's SIP submission included revisions to two definitions in Ecology's nonattainment NSR program. The revised definition of ''regulated NSR pollutant'' at WAC 173–400–810(24) identifies precursors to both ozone and $PM_{2.5}$ in nonattainment areas. With respect to $PM_{2.5}$, the revised definition of ''regulated NSR pollutant'' at WAC 173–400–810(24) identifies sulfur dioxide and nitrogen oxides as regulated $PM_{2.5}$ precursors while volatile organic compounds (VOCs) and ammonia are not regulated $PM_{2.5}$ precursors in $PM_{2.5}$ nonattainment areas in the State. The revised definition of ''significant'' at WAC 173–400–810(27) adds significant emission rates for direct $PM_{2.5}$ and for sulfur dioxide and nitrogen oxides as $PM_{2.5}$ precursors. These revisions, although consistent with the 2008 NSR $PM_{2.5}$ Rule developed in accordance with subpart 1 of the Act, may not contain the elements necessary to satisfy the Clean Air Act requirements when evaluated under the subpart 4 statutory requirements. In particular, Ecology's submission does not include regulation of VOCs and ammonia as $PM_{2.5}$ precursors, nor does it include a demonstration consistent with section 189(e) showing that major sources of those precursor pollutants would not contribute significantly to $PM_{2.5}$ levels exceeding the standard in the area. For these reasons, the EPA cannot conclude at this time that this part of Ecology's nonattainment NSR submission satisfies all of the requirements of subpart 4 as they pertain to $PM_{2.5}$ nonattainment NSR permitting.

Although the revisions to Ecology's nonattainment NSR rule may not contain all of the necessary elements to satisfy the CAA requirements when evaluated under the subpart 4 provisions, the revisions themselves represent a strengthening of the currently-approved Washington SIP which does not address $PM_{2.5}$ at all. As a result of the June 2014 final rule, Ecology will have until December 31, 2014, to make any additional submission necessary to address the requirements of subpart 4, including addressing the $PM_{2.5}$ precursors VOCs and ammonia. For these reasons, the EPA is proposing to approve the major NNSR revisions at WAC 173–400–800 through 173–400–860, as further discussed below, without listing as a deficiency at this time the absence of either the regulation or evaluation of VOCs and ammonia as $PM_{2.5}$ precursors.

IV. Washington SIP Revisions

A. WAC 173–400–110, New Source Review (NSR) for Sources and Portable Sources; WAC 173–400–111, Processing Notice of Construction Applications for Sources, Stationary Sources and Portable Sources; and WAC 173–400–112 Requirements for New Sources in Nonattainment Areas—Review for Compliance With Regulations

As described in more detail in the EPA's July 10, 2014 proposal, WAC 173–400–110 through –112 are the starting point for any source seeking to construct a new source or modify an existing source in a nonattainment area under Ecology's rules, whether major or minor. Specific provisions in these sections direct sources constructing a ''major'' source or making a ''major modification'' to a ''major'' source in a nonattainment area to also comply with the requirements of WAC 173–400–800 through –860. See, for example, WAC 173–400–110(1)(d). As also discussed in that July 2014 action, the EPA's review of WAC 173–400–110 through–112 expressly did not include a determination that these revised regulations met requirements for approval of a SIP-approved major NNSR permitting program (40 CFR 51.165). In this action, we are proposing to approve WAC 173–400–110 through –112 for purposes of implementing the major NNSR permitting program because these provisions require compliance with WAC 173–400–800 through –860 (which, as discussed below, are consistent with the CAA requirements for a major NNSR permitting program) and contain other related permit and permit processing provisions that are consistent with CAA requirements.

B. WAC 173–400–800, Major Stationary Source and Major Modification in a Nonattainment Area

As described in more detail in the EPA's July 10, 2014 proposal, Ecology shares permitting jurisdiction with seven local clean air agencies and one other state agency, the Energy Facilities Site Evaluation Council (EFSEC). WAC 173–400–800, in conjunction with WAC 173–400–020, describes how Ecology's nonattainment NSR regulations apply in the local and EFSEC jurisdictions. At this time, the EPA is proposing approval of WAC 173–400–800 through 173–400–860 only for those facilities subject to Ecology's direct permitting jurisdiction. This includes all facilities located in Adams, Asotin, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, San Juan, Stevens, Walla Walla, and Whitman

[1] 706 F.3d 428 (D.C. Cir. 2013).

Counties. It also included also includes kraft pulp mills, sulfite pulping mills, and primary aluminum plants, for which Ecology has direct state-wide permitting jurisdiction under the SIP approved provisions of WAC 173–405–012, WAC 173–410–012, and WAC 173–415–012. Ecology's direct permitting jurisdiction includes the largest industrial source in the Tacoma-Pierce County $PM_{2.5}$ nonattainment area, the kraft pulp mill owned by RockTenn (formerly Simpson Tacoma Kraft). The remaining facilities in the nonattainment area are subject to the Puget Sound Clean Air Agency's permitting jurisdiction. The EPA intends to review and act upon Puget Sound Clean Air Agency's nonattainment NSR regulations in a separate, future action.

C. WAC 173–400–810, Major Stationary Source and Major Modification Definitions.

Section 173–400–810 WAC incorporates the definitions contained in 40 CFR 51.165, the regulation that sets forth the requirements for SIPs for major NNSR. This includes important definitional changes made in the EPA's 2008 NSR $PM_{2.5}$ Rule establishing SO_2 and NO_X as presumptive $PM_{2.5}$ precursors, with significant emission rates of 40 tons per year (tpy) for each pollutant. It also includes significant emission rates for PM_{10} of 15 tpy and $PM_{2.5}$ of 10 tpy, including gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. This section makes clear that, in the case of a conflict between the definitions contained in WAC 173–400–810 and other parts of Chapter 173–400 WAC, the definitions of WAC 173–400–810 apply to major NNSR. The EPA reviewed Ecology's submission and is proposing to approve the definitions contained in WAC 173–400–810 as consistent with the EPA's definitions contained in 40 CFR 51.165.

D. WAC 173–400–820, Determining If a New Stationary Source or Modification to a Stationary Source Is Subject to These Requirements

WAC 173–400–820 uses the emission calculations found in 40 CFR 51.165 to determine if a project in a nonattainment area is subject to major NNSR requirements due to an increase in its emissions. The EPA reviewed Ecology's submission and is proposing to approve the emission calculations provisions contained in WAC 173–400–820 as consistent with 40 CFR 51.165(2).

E. WAC 173–400–830, Permitting Requirements

The majority of this section was part of the existing SIP at WAC 173–400–112 (1993), *Requirements for New Sources in Nonattainment Areas,* which the EPA last approved in 1995 (60 FR 28726, June 2, 1995). Ecology moved the major source nonattainment NSR provisions to a new WAC 173–400–800 thorough 173–400–860 for clarity to the public and regulated community. Ecology also incorporated other 40 CFR 51.165 requirements which were added to regulation since the EPA's last approval in 1995. The EPA reviewed WAC 173–400–830 and is proposing to determine that it is consistent with the SIP-approved provisions formerly contained in WAC 173–400–112 and the EPA's permitting requirements contained in 40 CFR 51.165.

F. WAC 173–400–840, Emission Offset Requirements

Under CAA section 173, all major sources and major modifications at existing major sources within a nonattainment area must obtain emissions reductions to offset any emissions increases of nonattainment pollutants resulting from the project in an amount that is at least equal to the emissions increase, and that is consistent with reasonable further progress towards attainment. The EPA refers to the proportional difference between the amount of required offsets to the amount of emissions increases as the ''offset ratio.'' The CAA specifies an offset ratio for several situations. In ozone nonattainment areas subject to subpart 2 (of title 1, part D of the CAA), the ratio is set between 1.1:1 and 1.5:1 depending on the level of classification pursuant to subpart 2. For other nonattainment areas, the CAA establishes a minimum offset ratio of 1:1. The EPA has reviewed Ecology's offset program and ratios and is proposing to approve WAC 173–400–840 as consistent with the CAA.

G. Section 173–400–850 WAC, Actual Emissions Plantwide Applicability Limitation (PAL)

WAC 173–400–850 adopts by reference the plant-wide applicability limit process and requirements of 40 CFR Part 51, Appendix S, with the minor clarifications to adapt Appendix S to Ecology's permitting program. The EPA has reviewed WAC 173–400–850 and is proposing to determine that it is consistent with 40 CFR Part 51, Appendix S.

H. WAC 173–400–171, Public Notice and Opportunity for Public Comment and WAC 173–400–860, Public Involvement Procedures

This section states that the public participation procedures contained in section 173–400–171 WAC, proposed for approval by the EPA on July 10, 2014, shall be used for any major NNSR permit issued pursuant to WAC 173–400–830 or WAC 173–400–850. Public participation requirements for major NNSR permitting must be consistent with the requirements of 40 CFR 51.160 and 161. See 40 CFR 51.165(f)(5). Having proposed to determine in our previous action that WAC 173–400–171 is consistent with 40 CFR 51.160 and 161 for purposes of minor NSR, we now propose to find that WAC 173–400–171 and -860 meet CAA requirements for major NNSR.

I. WAC 173–400–131, Issuance of Emission Reduction Credits and WAC 173–400–136, Use of Emission Reduction Credits (ERC)

WAC 173–400–131 and 173–400–136 implement a program to issue emission reduction credits (ERC's) useable for offsets required by the major NNSR permitting program and the attainment area offset provisions for major sources in WAC 173–400–113(4). ERC's under this program may also be used as creditable emission reductions for netting purposes in the major NNSR and PSD permitting programs provided they meet the requirements set forth in the definitions of ''major modification'' in those programs. Since the EPA last approved Chapter 173–400 WAC, Ecology has revised these provisions to make them consistent with the EPA's Final Emissions Trading Policy Statement, (51 FR 43814, December 4, 1986) and 40 CFR 51.165 and 51.166. The EPA is therefore proposing to approve both WAC 173–400–131 and WAC 173–400–136 as consistent with the CAA but only for the purposes of implementing Washington's major NNSR program. The EPA will take action on these provisions for purposes of Ecology's PSD permitting program in a separate, future action.

V. The EPA's Proposed Action

Consistent with the discussion above, the EPA proposes to approve the major NNSR revisions submitted by Ecology on January 27, 2014. The EPA plans to take action on the remaining provisions related to PSD and visibility permitting requirements for major stationary sources in a separate, future action. This action will result in proposed changes

to the Washington SIP in 40 CFR part 52, subpart WW.

A. Rules To Approve Into the SIP

The EPA proposes to approve into the SIP at 40 CFR part 52, subpart WW, the Ecology regulations listed in Table 1. The EPA is also affirming that the July 10, 2014 proposed approval of the general air quality regulations contained WAC 173–400–110 through -112 and WAC 173–400–171 meet the EPA's requirements for major NNSR.

TABLE 1—WASHINGTON STATE DEPARTMENT OF ECOLOGY REGULATIONS FOR PROPOSED APPROVAL

State citation	Title/Subject	State effective date	Explanation
Chapter 173–400 WAC, General Regulations for Air Pollution Sources			
173–400–131	Issuance of Emission Reduction Credits	4/1/11	
173–400–136	Use of Emission Reduction Credits (ERC)	12/29/12	
173–400–800	Major Stationary Source and Major Modification in a Nonattainment Area	4/1/11	
173–400–810	Major Stationary Source and Major Modification Definitions	12/29/12	
173–400–820	Determining if a New Stationary Source or Modification to a Stationary Source is Subject to these Requirements.	12/29/12	
173–400–830	Permitting Requirements	12/29/12	
173–400–840	Emission Offset Requirements	12/29/12	
173–400–850	Actual Emissions Plantwide Applicability Limitation (PAL)	12/29/12	
173–400–860	Public Involvement Procedures	4/1/11	

B. Scope of Proposed Action

As previously discussed in the EPA's July 10, 2014 proposal regarding applicability under section 173–400–020 WAC, the EPA's proposed approval at this time is limited to only those counties or sources where the Department of Ecology has direct jurisdiction. This proposed action excludes sources subject to EFSEC or local clean air agency jurisdiction. The counties where Ecology has direct jurisdiction are: Adams, Asotin, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, San Juan, Stevens, Walla Walla, and Whitman Counties. The EPA also notes that under the SIP approved provisions of WAC 173–405–012, WAC 173–410–012, and WAC 173–415–012, Ecology has statewide, direct jurisdiction for kraft pulp mills, sulfite pulping mills, and primary aluminum plants, including the RockTenn facility located in the Tacoma-Pierce County $PM_{2.5}$ nonattainment area.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves the state's law as meeting Federal requirements and does not impose additional requirements beyond those imposed by the state's law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not impose substantial direct costs on tribal governments or preempt tribal law. The SIP is not approved to apply in Indian country located in the state, except for non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area and the EPA is therefore approving this SIP on such lands. Consistent with EPA policy, the EPA nonetheless provided a consultation opportunity to the Puyallup Tribe in a letter dated February 25, 2014. The EPA did not receive a request for consultation.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 16, 2014.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2014–17607 Filed 7–24–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2013–0214; FRL–9914–25–Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Solvent Degreasing Operations Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a request submitted by the Indiana Department of Environmental Management (IDEM) on March 14, 2013, to revise the Indiana state implementation plan (SIP) solvent degreasing operation rule. The state's submission seeks to extend vapor pressure limitations (previously applying to four counties) state-wide, add certain exemptions and streamline the rule by repealing and consolidating certain provisions. There is also a revised definition for ''cold cleaner degreaser.''

DATES: Comments must be received on or before August 25, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2013–0214 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakley.pamela@epa.gov.*
3. *Fax:* (312) 692–2450.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies Section (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule, and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: July 14, 2014.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2014–17475 Filed 7–24–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2013–0821; FRL–9910–53]

Fragrance Components; Proposed Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establishes an exemption from the requirement of a tolerance for residues of various fragrance component substances (when used as inert ingredients) in antimicrobial pesticide formulations for use on food contact surfaces in public eating places, dairy processing equipment, and food processing equipment and utensils.

DATES: Comments must be received on or before September 23, 2014.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2013–0821, by one of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: 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: *rossi.lois@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 *www.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. This Proposal

EPA on its own initiative, under FFDCA section 408(e), 21 U.S.C. 346a(e), is proposing to establish an exemption from the requirement of a tolerance for residues of acetaldehyde (CAS Reg. No. 75–07–0), acetic acid (CAS Reg. No. 64–19–7), allyl cyclohexyl propionate (CAS Reg. No. 2705–87–5), butryic acid (CAS Reg. No. 107–92–6), butyl alcohol (CAS Reg. No. 71–36–3), citral (CAS Reg. No. 5392–40–5), citronellol (CAS Reg. No. 106–22–9), citronellyl acetate (CAS Reg. No. 150–84–5), β-damascone, (Z)- (CAS Reg. No. 23726–92–3), decanal (CAS Reg. No. 112–31–2), (E)-4-decenal (CAS Reg. No. 65405–70–1), decanoic acid (CAS Reg. No. 334–48–5), 1-decanol (CAS Reg. No. 112–30–1), 2,6-dimethyl-5-heptanal (CAS Reg. No. 106–72–9), 2-dodecanol, (2E)- (CAS Reg. No. 20407–84–5), d-limonene (CAS Reg. No. 5989–27–5), ethyl 2-methylbutyrate (CAS Reg. No. 452–79–1), (E)–geraniol (CAS Reg. No. 106–24–1), (E)-geraniol acetate (CAS Reg. No. 105–87–3), heptanal (CAS Reg. No. 111–71–7), heptanoic acid (CAS Reg. No. 111–14–8), heptyl alcohol (CAS Reg. No. 111–70–6), hexanal (CAS Reg. No. 66–25–1), hexanoic acid (CAS Reg. No. 142–62–1), (Z)-3-hexenol (CAS Reg. No. 928–96–1), (Z)-3-hexenol acetate (CAS Reg. No. 3681–71–8), hexyl acetate (CAS Reg. No. 142–92–7), hexyl alcohol (CAS Reg. No. 111–27–3), lauric acid (CAS Reg. No. 143–07–7), lauric aldehyde (CAS Reg. No. 112–54–9), lauryl alcohol (CAS Reg. No. 112–53–8), methyl-α-ionone (CAS Reg. No. 127–42–4), 3-methyl-2-butenyl acetate (CAS Reg. No. 1191–16–8), 2-methylundecanal (CAS Reg. No. 110–41–8), myristaldehyde (CAS Reg. No. 124–25–4), myristic acid (CAS Reg. No. 544–63–8), neryl acetate (CAS Reg. No. 141–12–8), n-hexanol (CAS Reg. No. 111–27–3), nonanal (CAS Reg. No. 124–19–6), nonanoic acid (CAS Reg. No. 112–05–0), nonyl alcohol (CAS Reg. No. 143–08–8), octanal (CAS Reg. No. 124–13–0), octanoic acid (CAS Reg. No. 124–07–2), 1–octanol (CAS Reg. No. 111–87–5), palmitic acid (CAS Reg. No. 57–10–3), propionic acid (CAS Reg. No. 79–09–4), stearic acid (CAS Reg. No. 57–11–4), 2-tridecanal (CAS Reg. No. 7774–82–5), 3,5,5-trimethylhexanal (CAS Reg. No. 5435–64–3), undecanal (CAS Reg. No. 112–44–7), undecyl alcohol (CAS Reg. No. 112–42–5), valeraldehyde (CAS Reg. No. 110–62–3), and valeric acid (CAS Reg. No. 109–52–4) when used as fragrance components (i.e., inert ingredients) in antimicrobial pesticide formulations for use on food contact surfaces in public eating places, dairy processing equipment, and food processing equipment and utensils at end–use concentrations not to exceed 100 parts per million (ppm).

III. Aggregate Risk Assessment and Determination of Safety

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of FFDCA section 408 and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm.*

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with FFDCA section 408(b)(2), for an exemption from tolerance for residues of fragrance components listed in Unit II. used as inert ingredients in antimicrobial pesticide formulations for use on food contact surfaces in public eating places, dairy processing equipment, and food processing equipment and utensils at end-use concentrations not to exceed 100 ppm. EPA's assessment of exposures and risks associated with establishing the exemptions from tolerance for the fragrance components listed in Unit II. follows:

A. Toxicological Profile

In the case of the fragrance components listed in Unit II. above, each of these substances has been approved for use as a synthetic flavoring substance in food under 21 CFR 172.515 based on a substance-specific evaluation conducted by the U.S. Food and Drug Administration (FDA). Additionally, the fragrance components listed in Unit II. above have been evaluated and approved for use as food flavoring agents by the Joint Food and Agricultural Organization of the United Nations/World Health Organization Expert Committee on Food Additives (JECFA) and the European Food Safety Agency (EFSA) as part of their assessment of more than 2,800 food flavoring substances. The EFSA and JECFA food flavoring substance were conducted under an approach titled the Threshold of Toxicological Concern (TTC). Under this approach, generic human exposure threshold values for both non-cancer and cancer endpoints are set at a level below which there would be no appreciable risk to human health. These generic values allow for the safety assessment of substances even

in the absence of substance-specific hazard data.

The derivation of TTC human exposure threshold values for non-cancer endpoints is based on an extensive reference database compiled by Munro, (Ref. 1) which included data on chronic, subchronic, reproductive and developmental toxicity studies primarily derived from the reports of the US National Toxicology Program (NTP), the toxicological monographs of JECFA, the EPA Integrated Risk Information System (IRIS), and the Developmental and Reproductive Toxicology (DART) database compiled by the US National Library of Medicine. These sources were considered to contain well-validated toxicological data for well-defined chemical structures, covering pesticides, food additives, industrial and other types of chemicals. Only studies using the oral route of administration (gavage, diet, drinking water, or capsule) were included. In all, the reference database contained 2941 no-observed-adverse-effect levels (NOAELs) from studies conducted on 613 substances, and from these the most conservative (lowest) NOAEL for each substance was entered on the published database. The NOAELs in the reference database were those selected by the original authors of each study, apart from the studies in the IRIS database, for which the NOAELs were selected by the EPA. Munro commented that some authors were highly conservative in their selection of a NOAEL, but such NOAELs were still used for the database to maintain a conservative approach. Munro also stated that, in the calculation of the TTC values, NOAELs from subchronic studies were divided by a factor of 3 to approximate the NOAELs that are likely to be derived from a chronic study.

The chemicals in the Munro database were divided into three structural classes, based on a ''decision tree'' developed earlier by Cramer et al. (Ref. 2) Cramer Class I are chemicals of simple structure, with efficient modes of metabolism, suggesting low oral toxicity; Cramer Class III are chemicals with structures suggesting significant toxicity or which did not permit any strong initial presumption of safety, and Cramer Class II are chemicals with structures that were less innocuous than Cramer Class I but without features suggesting significant toxicity. Human exposure threshold values were derived by taking the lower 5th percentile value of the distribution of NOAELs for the substances in each of the three Cramer structural classes, multiplying by 60 to convert the values expressed as milligrams/kilograms (mg/kg) of body weight (bw) per day into mg/person per day, and then dividing by a factor of 100 to ensure a margin of safety.

For substances without structural alerts for cancer, the TTC human exposure values for non-cancer risks are considered protective of any potential cancer risk. For substances with a structural alert for cancer, a separate TTC value has been derived. Originally, FDA developed human exposure threshold values to protect against all chronic risks, including the endpoint of cancer, without regard to whether the substance had a structural alert for carcinogenicity (Ref. 3, 4, 5). FDA derived these threshold values using mathematical modeling of risks from animal bioassay data on over 500 known genotoxic and non-genotoxic carcinogens, based on their carcinogenic potency. In 1995, FDA incorporated the threshold value in its threshold of regulation (TOR) policy for substances present in food contact materials. (Ref 6). Under the TOR, substances used in food contact materials that are present in the diet at concentrations below the threshold level are exempted from regulation as food additives. Subsequently, FDA modified this approach by adopting lower threshold values for substances with a structural alert for carcinogenicity. Kroes et al. (Ref. 7) This FDA approach as to substances with structural alerts for carcinogenicity was further refined and adopted by EFSA and JEFCA for use in the TTC approach.

The TTC approach has been incorporated in the evaluations made by JECFA and EFSA in which the organizations both concluded that the each of the substances listed in Unit II. were safe for use as flavoring agents in foods. Under 21 CFR 170.39 *Threshold of regulation for substances used in food-contact articles,* FDA has issued exemptions from regulation as food additives for a number of substances based on human exposure threshold values.

B. Toxicological Points of Departure/ Levels of Concern

The human exposure threshold value for threshold (i.e., noncancer) risks is based upon Cramer structural class. In the case of the fragrance components listed in Unit II., all of the substances are included in the Cramer Class I category, which is defined as chemicals of simple structure and efficient modes of metabolism, suggesting low oral toxicity. An EFSA Scientific Committee critical evaluation of the human threshold values for threshold risks concluded that ''the use of the 5th percentile No-observed-adverse-effect-level (NOAEL) and an uncertainty factor of 100 to derive the TTC value gives a very low probability (somewhere between 0–5%) of any appreciable non-cancer risk to human health from exposures to substances below the Cramer Class I TTC value of 30 μg/kg/day'' (Ref. 8)

Use of TTC values for risk assessment of the fragrance components listed in Unit II. is a more conservative alternative to the chemical-specific Population Adjusted Dose (PAD) or Reference Dose (RfD) approach typically used in Agency risk assessments. For example, in the case of substances having chemical structures described by Cramer Class I for which chemical-specific risk assessments have been performed, these substances have PAD/RfD values which are often orders of magnitude greater than the corresponding TTC values (Ref 9). A summary of the safe exposure levels corresponding to each of the exposure scenarios considered the aggregate exposure assessment of the fragrance components listed in Unit II. is given below:

1. *Acute dietary (all populations).* There were no effects that could be attributed to a single dose in the database. Therefore, a quantitative acute dietary assessment is not necessary.

2. *Chronic dietary (all populations).* Concerns for chronic dietary exposures exceeding the TTC value of 30 μg/kg/day.

3. *Incidental oral short-term (1 to 30 days).* Concerns for incidental oral short-term exposures exceeding the TTC value of 30 μg/kg/day.

4. *Dermal short-term (1 to 30 days) and intermediate-term (1 to 6 months).* Concern for dermal exposures exceeding the TTC value of 30 μg/kg/day based on oral toxicity data and conservative assumption of 100% dermal absorption.

5. *Inhalation short-term (1 to 30 days) and intermediate-term (1 to 6 months).* Concern for inhalation exposures exceeding the TTC value of 30 μg/kg/day based on oral toxicity data. Based on subchronic inhalation data for a number of fragrance substances, including some of fragrance components listed in Unit II., in which no adverse effects were noted at exposure levels up to 1% of ambient air (Ref. 10), it is reasonable to assume that in the case of the fragrance components listed in Unit II. inhalation toxicity would not be observed at doses below which oral toxicity is observed.

6. *Cancer (Oral, dermal, inhalation).* The Agency used a qualitative structure activity relationship (SAR) database, DEREK11, to determine if there were structural alerts for potential genotoxicity/carcinogenicity for any of

the fragrance components. No structural alerts for genotoxicity/carcinogenicity relevant to human exposure to these substances as flavoring agents/fragrance components were identified, therefore the use of the TTC human exposure threshold for non-threshold risks for these fragrance components is not applicable. In these circumstances, assessment under the TTC value for non-cancer risks is protective for all risks, including carcinogenicity.

The risk assessment and use of human threshold values for evaluation of food flavoring agents by JECFA and EFSA has focused on oral toxicity and dietary exposure to substances via food and feed. However, the applicability of the TTC approach to substance exposure by routes other than the oral route has been considered by the ESFA Scientific Committee. The Scientific Committee determined that when several routes of exposure are to be taken into account they should be reflected in the exposure assessment used in the application of the TTC approach and that ''the application of the TTC approach to routes of exposure other than oral can be done via route-to-route extrapolation, as is often done in conventional risk assessment in cases where only oral toxicity data are available.''

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to the fragrance components listed in Unit II., EPA considered exposure under the proposed tolerance exemptions at a concentration not to exceed 100 ppm for each of the fragrance components listed in Unit II. as well as any other sources of dietary exposure. The use limitation of 100 ppm was incorporated by the Agency to reflect maximum concentrations of these fragrance components in antimicrobial pesticide formulations as well as to ensure that exposures to these fragrance components will be below levels of concern. In conducting the dietary exposure assessment for the fragrance components listed in Unit II., EPA considered dietary exposure from potential residues in or on food resulting from the use as inert ingredients in antimicrobial pesticide product formulations from treated food contact surfaces; and from food that contains the fragrance components as flavoring agents. As to the residue levels in or food resulting from the inert ingredient uses, in the absence of actual dietary exposure data resulting from this use, the EPA has utilized a conservative, health-protective method of estimating dietary intake that is based upon conservative assumptions related to the amount of residues that can be transferred to foods as a result of the proposed use of the fragrance components in food contact sanitizing antimicrobial pesticide products. This same methodology has been utilized by EPA in estimating dietary exposures to antimicrobial pesticides used in food-handling settings. A complete description of the approach used to assess dietary exposures resulting from food contact sanitizing solution uses of the fragrance components can be found at *http://www.regulations.gov* in document; ''Various Fragrance Components: Human Health Risk Assessment and Ecological Effects Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations,'' pp. 5–8 in docket ID number EPA–HQ–OPP–2013–0821.

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicity database for the fragrance components listed in Unit II., therefore a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, the Agency believes the assumptions used to estimate chronic dietary exposures lead to an extremely conservative assessment of chronic dietary risk due to a series of compounded conservatisms. First, when a surface is treated with a disinfectant, a quantity of the disinfectant remains on the surface (residual solution). In the absence of any other data, EPA has used an estimated worst-case concentration of 1 mg of solution per square centimeter (cm) of treated surface area for this quantity. Second, the conservatism of this methodology is compounded by EPA's decision to assume a worst case scenario that all food that an individual consumes will come into contact with 4,000 cm^2 of sanitized non-porous food-contact surfaces. This contact area represents all the surface area from silverware, china, and glass used by a person who regularly eats three meals per day at an institutional or public facility. The surface area of counter tops that comes in contact with food is expected to be smaller than the surface area for food utensils. As a conservative estimate, EPA assumed that 2,000 cm^2 of treated counter top surface area, comes into contact with an individual's food per day. Third, EPA assumes that 100% of the material present on food contact surfaces will migrate to food (Ref 11).

iii. *Cancer.* Based on the data summarized in Unit III. A., EPA has concluded that the fragrance components listed in Unit II. are not expected to be carcinogenic to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

2. *Dietary exposure from drinking water.* The proposed use of the fragrance components listed in Unit II. in antimicrobial pesticide products has only a limited opportunity to result in contamination of drinking water because these types of products are used inside of structures. There is the possibility of exposure to drinking water sources via down-the-drain releases and discharges to waste water treatment plants; however, based on the extremely low concentrations of the fragrance components in pesticide formulations, combined with the biodegradability of the fragrance components, there would be at most a negligible exposure to surface water or ground water. Therefore, the use of these fragrance components as inert ingredients is not expected to contribute to dietary exposure from drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticide, and flea and tick control on pets).

The use of the fragrance components in food contact surface antimicrobial pesticide products could result in short- and intermediate-term residential exposures, adult handler dermal and inhalation exposure; post-application dermal and inhalation exposure and child's post- application dermal and incidental oral exposure. In addition, non pesticidal uses of these substances as fragrance components in consumer products may also result in residential dermal and inhalation exposure. However, these pesticidal and non pesticidal non-dietary exposures would be negligible in comparison to the highly conservative estimates of dietary exposure as discussed in Unit III.C.1. above. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

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

cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

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

D. Safety Factor for Infants and Children

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

The use of a threshold exposure level as described in Unit II. above is health protective of any toxicity to infants and children and the exposure assumptions utilized in the risk assessment of the fragrance components are highly conservative (protective). These assessments will not underestimate the exposure and risks posed by these fragrance components and no additional safety factor is needed for assessing risk to infants and

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, the fragrance components are not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to each of the fragrance components listed in Unit II. from food and water will utilize 23% of the safe exposure level for the U.S. population and all subpopulations.

3. *From non-dietary exposure.* The fragrance components listed in Unit II. may be utilized in antimicrobial pesticide products with uses that could result in residential exposure such as hard surface cleaning products. For residential handler exposure, the Agency assumed that most residential use will result in short-term (1 to 30 days) dermal and inhalation exposures.

The Agency assumed that post-application exposure in residential settings is expected to be short-term in duration only but antimicrobial products used as cleaning agents may be used in facilities where cleaning activities can occur on an intermediate-term basis. Therefore, these post-application scenarios were included in the intermediate-term aggregate assessment. The scenarios evaluated were short- and intermediate term post-application dermal and inhalation (indoor), short- and intermediate-term incidental oral ingestion from treated indoor surfaces (hand-to-mouth vinyl/hard surfaces).

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/science/residential-exposure-sop.html.*

4. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

These fragrance components may be utilized as inert ingredients in pesticide formulations registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to the fragrance components listed in Unit II.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate exposures for each of the individual fragrance components listed in Unit II. do not exceed 24% of the safe exposure level (i.e., a level equivalent to a PAD or RfD) and therefore are not of concern.

5. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures result in aggregate exposures that do not exceed 24% of the safe exposure level for each of the fragrance components listed in Unit II. and not of concern.

6. *Aggregate cancer risk for U.S. population.* Based on the lack of structural alerts for carcinogenicity and the lack of exceedance of the chronic TTC value, the fragrance components listed in Unit II. are not expected to pose a cancer risk to humans.

7. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to residues of each of the fragrance components listed in Unit II. Therefore EPA is proposing to exempt from the requirement of a tolerance under 40 CFR 180.940(a) the residues of acetaldehyde, acetic acid, allyl cyclohexyl propionate, butryic acid, butyl alcohol, citral, citronellol, citronellyl acetate, β-damascone, (Z)-, decanal, (E)-4-decenal, decanoic acid, 1-decanol, 2,6-dimethyl-5-heptanal, 2-dodecanol, (2E)-, d-limonene, ethyl 2-methylbutyrate, (E)-geraniol, (E)-geraniol acetate, heptanal), heptanoic acid, heptyl alcohol, hexanal, hexanoic acid, (Z)-3-hexenol, (Z)-3-hexenol acetate, hexyl acetate, hexyl alcohol, lauric acid, lauric aldehyde, lauryl alcohol), methyl-α-ionone, 3-methyl-2-butenyl acetate, 2-methylundecanal, myristaldehyde, myristic acid, neryl acetate, n-hexanol, nonanal, nonanoic acid, nonyl alcohol, octanal, octanoic acid, 1-octanol, palmitic acid, propionic acid, stearic acid, 2-tridecanal, 3,5,5-trimethylhexanal, undecanal, undecyl alcohol, valeraldehyde, and valeric acid.

IV. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation. The use limitation of 100 ppm will be enforced through the pesticide registration process under the FIFRA, 7 U.S.C. 136 et seq. EPA will not register any food-contact use antimicrobial pesticide for sale or distribution containing any of the fragrance components listed in Unit II. at concentrations exceeding 100 ppm.

V. Conclusion

An exemption from the requirement for a tolerance is proposed for residues of acetaldehyde, acetic acid, allyl cyclohexyl propionate, butryic acid, butyl alcohol, citral, citronellol, citronellyl acetate, β-damascone, (Z)-, decanal, (E)-4-decenal, decanoic acid, 1-decanol, 2,6-dimethyl-5-heptanal, 2-dodecanol, (2E)-, d-limonene, ethyl 2-methylbutyrate, (E)-geraniol, (E)-geraniol acetate, heptanal), heptanoic acid, heptyl alcohol, hexanal, hexanoic acid, (Z)-3-hexenol, (Z)-3-hexenol acetate, hexyl acetate, hexyl alcohol, lauric acid, lauric aldehyde, lauryl alcohol), methyl-α-ionone, 3-methyl-2-butenyl acetate, 2-methylundecanal, myristaldehyde, myristic acid, neryl acetate, n-hexanol, nonanal, nonanoic acid, nonyl alcohol, octanal, octanoic acid, 1-octanol, palmitic acid, propionic acid, stearic acid, 2-tridecanal, 3,5,5-trimethylhexanal, undecanal, undecyl alcohol, valeraldehyde, and valeric acid when used as inert ingredients (fragrance components) in antimicrobial pesticide formulations for use on food contact surfaces in public eating places, dairy processing equipment, and food processing equipment and utensils at end-use concentrations not to exceed 100 ppm.

VI. Statutory and Executive Order Reviews

This document proposes to establish exemptions from tolerances under FFDCA section 408(d). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), or impose any enforceable duty or contain any unfunded mandate as described under Title II. of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*). Nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note). The Agency hereby certifies under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) that this proposed action will not have significant negative economic impact on a substantial number of small entities. Establishing an a pesticide tolerance or an exemption from the requirement of a pesticide tolerance is, in effect, the removal of a regulatory restriction on pesticide residues in food and thus such an action will not have any negative economic impact on any entities, including small entities.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

VII. References

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American Chemical Society, Washington, DC. pp 132–139. 1992.
6. U.S. Food and Drug Administration (FDA). *Food Additives: Threshold of Regulation for Substances Used in Food-Contact Articles.* **Federal Register** (60 FR 36582–36596, Monday, July 17, 1995).
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11. U.S. Environmental Protection Agency. *Reregistration Eligibility Decision for Alkyl Dimethyl Benzyl Ammonium Chloride (ADBAC).* pp. 15–16. 2006. *http://www.epa.gov/pesticides/reregistration/REDs/adbac_red.pdf.*

List of Subjects in 40 CFR Part 180

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

Dated: July 14, 2014.

Jack Housenger,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.940, add alphabetically the following inert ingredients to the table in paragraph (a) to read as follows:

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).

(a) * * *

Pesticide chemical	CAS Reg. No.	Limits
Acetaldehyde	75–07–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
Acetic acid	64–19–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Allyl cyclohexyl propionate	2705–87–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Butryic acid	107–92–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
Butyl alcohol	71–36–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
Citral	5392–40–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
Citronellol	106–22–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
Citronellyl acetate	150–84–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
β-Damascone, (Z)-	23726–92–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
Decanal	112–31–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
(E)-4-Decenal	65405–70–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
Decanoic acid	334–48–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
1-Decanol	112–30–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
2,6-Dimethyl-5-heptanal	106–72–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
2-Dodecanol, (2E)-	20407–84–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Ethyl 2-methylbutyrate	452–79–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
(E)-Geraniol	106–24–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
(E)-Geraniol acetate	105–87–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
Heptanal	111–71–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
Heptanoic acid	111–14–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
Heptyl alcohol	111–70–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
Hexanal	66–25–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
Hexanoic acid	142–62–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
n-Hexanol	111–27–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
(Z)-3-Hexenol	928–96–1	When ready for use, the end-use concentration is not to exceed 100 ppm.
(Z)-3-Hexenol acetate	3681–71–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
Hexyl acetate	142–92–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
Hexyl alcohol	111–27–3	When ready for use, the end-use concentration is not to exceed 100 ppm.

Pesticide chemical	CAS Reg. No.	Limits
* * *	*	* * *
Lauric acid	143–07–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
Lauric aldehyde	112–54–9	When ready for use, the end-use concentration is not to exceed 100 ppm.
Lauryl alcohol	112–53–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
d-Limonene	5989–27–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Methyl-α-ionone	127–42–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
3-Methyl-2-butenyl acetate	1191–16–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
2-Methylundecanal	110–41–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Myristaldehyde	124–25–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
Myristic acid	544–63–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
Neryl acetate	141–12–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Nonanal	124–19–6	When ready for use, the end-use concentration is not to exceed 100 ppm.
Nonanoic acid	112–05–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
Nonyl alcohol	143–08–8	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Octanal	124–13–0	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Octanoic acid	124–07–2	When ready for use, the end-use concentration is not to exceed 100 ppm.
1-Octanol	111–87–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Palmitic acid	57–10–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Propionic acid	79–09–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
Stearic acid	57–11–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *
2-Tridecanal	7774–82–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
3,5,5-Trimethylhexanal	5435–64–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
Undecanal	112–44–7	When ready for use, the end-use concentration is not to exceed 100 ppm.
Undecyl alcohol	112–42–5	When ready for use, the end-use concentration is not to exceed 100 ppm.
Valeraldehyde	110–62–3	When ready for use, the end-use concentration is not to exceed 100 ppm.
Valeric acid	109–52–4	When ready for use, the end-use concentration is not to exceed 100 ppm.
* * *	*	* * *

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[FR Doc. 2014–17613 Filed 7–24–14; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2013–0056; FXES11130900000C2–134–FF09E32000]

RIN 1018–AY46

Endangered and Threatened Wildlife and Plants; Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; revisions and notice of availability of a draft environmental impact statement; reopening of public comment period and announcement of public hearings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose new revisions to the existing nonessential experimental population designation of the Mexican wolf (*Canis lupus baileyi*) under section 10(j) of the Endangered Species Act of 1973, as amended, and announce the reopening of the public comment period and scheduling of public hearings on the proposed rule. In addition, we announce the availability of a draft environmental impact statement on the proposed revisions to the existing nonessential experimental population designation of the Mexican wolf, and an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, the associated draft environmental impact statement, and the amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: We will consider comments received on or before September 23, 2014. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**) must be received by 11:59 p.m. Eastern Time on the closing date. In order to meet a court-ordered settlement agreement deadline, we will not be able to extend the date for public review and comment on these documents.

Public Informational Sessions and Public Hearings: We will hold two public informational sessions and two public hearings on this proposed rule and draft environmental impact statement. We will hold a public informational session from 2:00 p.m. to 4:00 p.m., followed by a public hearing from 6:00 p.m. to 9:00 p.m., in Pinetop, Arizona, on Monday, August 11, 2014 (see **ADDRESSES**). We will hold a public informational session from 2:00 p.m. to 4:00 p.m., followed by a public hearing from 6:00 p.m. to 9:00 p.m., in Truth or Consequences, New Mexico, on Wednesday, August 13, 2014 (see **ADDRESSES**). Registration to present oral comments on the proposed rule and draft environmental impact statement at the public hearings will begin at the start of each informational session. With the exception of Federal elected officials, all oral comment registration cards will be pooled and drawn at random.

ADDRESSES: *Document availability:* The draft environmental impact statement for this proposed rule is available electronically on *http://www.regulations.gov* in Docket No. FWS–R2–ES–2013–0056 or from the office listed in **FOR FURTHER INFORMATION CONTACT.**

Document submission: You may submit written comments on this proposed rule and the draft environmental impact statement by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for FWS–R2–ES–2013–0056, which is the docket number for this rulemaking. You may submit a comment by clicking on ''Comment Now!''. Please ensure that you have found the correct rulemaking before submitting your comment.

(2) *By hard copy:* Submit by U.S. mail or hand delivery to: Public Comments Processing, Attn: FWS–R2–ES–2013–0056; Division of Policy and Directives Management; U.S. Fish and Wildlife Service Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments on the proposed rule revision and draft environmental impact statement only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information). To increase our efficiency in downloading comments, groups providing mass submissions should submit their comments in an Excel file.

Public informational sessions and public hearings: The August 11, 2014, public informational session and hearing will be held at the Hon-Dah Conference Center, 777 Highway 260, Pinetop, Arizona 85935. The August 13, 2014, public informational session and hearing will be held at the Civic Center, 400 West Fourth Street, Truth or Consequences, New Mexico 87901. People needing reasonable accommodations in order to attend and participate in the public hearings should contact the Mexican Wolf Recovery Program, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**).

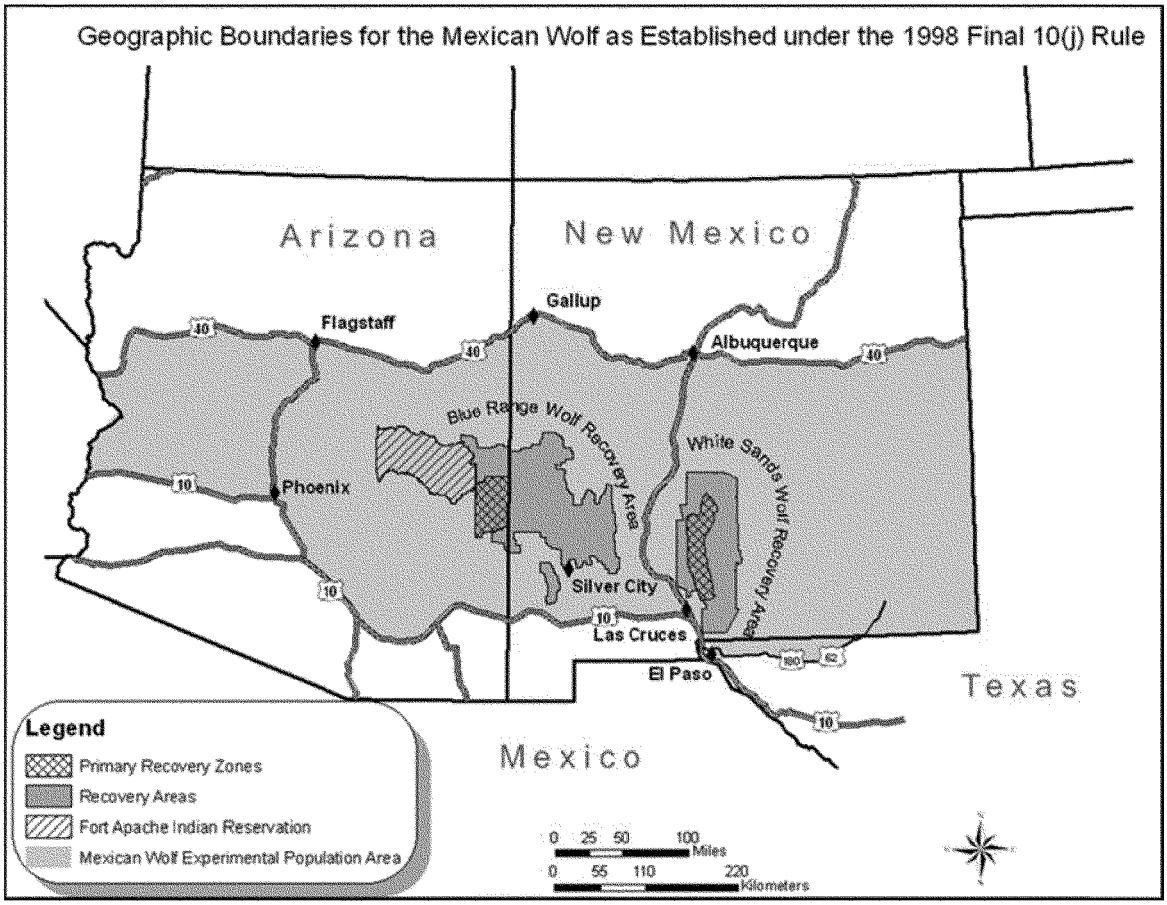
FOR FURTHER INFORMATION CONTACT: Sherry Barrett, Mexican Wolf Recovery Coordinator, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Road, NE., Albuquerque, NM 87113; by telephone 505–761–4704; or by facsimile 505–346–2542. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339. Further contact information can be found on the Mexican Wolf Recovery Program's Web site at *http://www.fws.gov/southwest/es/mexicanwolf/.*

SUPPLEMENTARY INFORMATION:

Executive Summary

In 1998, we, the U.S. Fish and Wildlife Service (Service), published in the **Federal Register** a final rule that established a nonessential experimental population of Mexican wolves in Arizona and New Mexico (63 FR 1752, January 12, 1998; Figure 1). We took this action in accordance with section 10(j) of the Endangered Species Act (16 U.S.C. 1531 et seq.) (Act), which allows us to designate as an ''experimental population'' a population of endangered or threatened species that has been or will be released into suitable natural habitat outside the species' current natural range. Experimental populations are treated as threatened species for purposes of section 9 of the Act. The general regulations that extend most section 9 prohibitions to threatened species do not apply to these populations, and we may use our discretion to devise management programs and special regulations for them.

Figure 1—Geographic Boundaries for the Mexican Wolf under the 1998 Final Section 10(j) Rule.



We established the Mexican wolf nonessential experimental population in consideration of the 1982 Mexican Wolf Recovery Plan, which has the primary objective of establishing a viable, self-sustaining population of at least 100 Mexican wolves in the wild. In March of 1998, we released 11 Mexican wolves from the captive-breeding program to the wild. Many additional individuals and family groups have been released or translocated since that time.

Through project reviews, annual reports, monitoring, and communication with our partners and the public, we now recognize that elements of the 1998 final rule need to be revised to help us enhance the growth, stability, and success of the nonessential experimental population. Accordingly, to improve implementation and conservation of the Mexican wolf nonessential experimental population, on June 13, 2013, we published a proposed rule in the **Federal Register** to make several changes to the 1998 section 10(j) rule and management regulations for Mexican wolves (78 FR 35719).

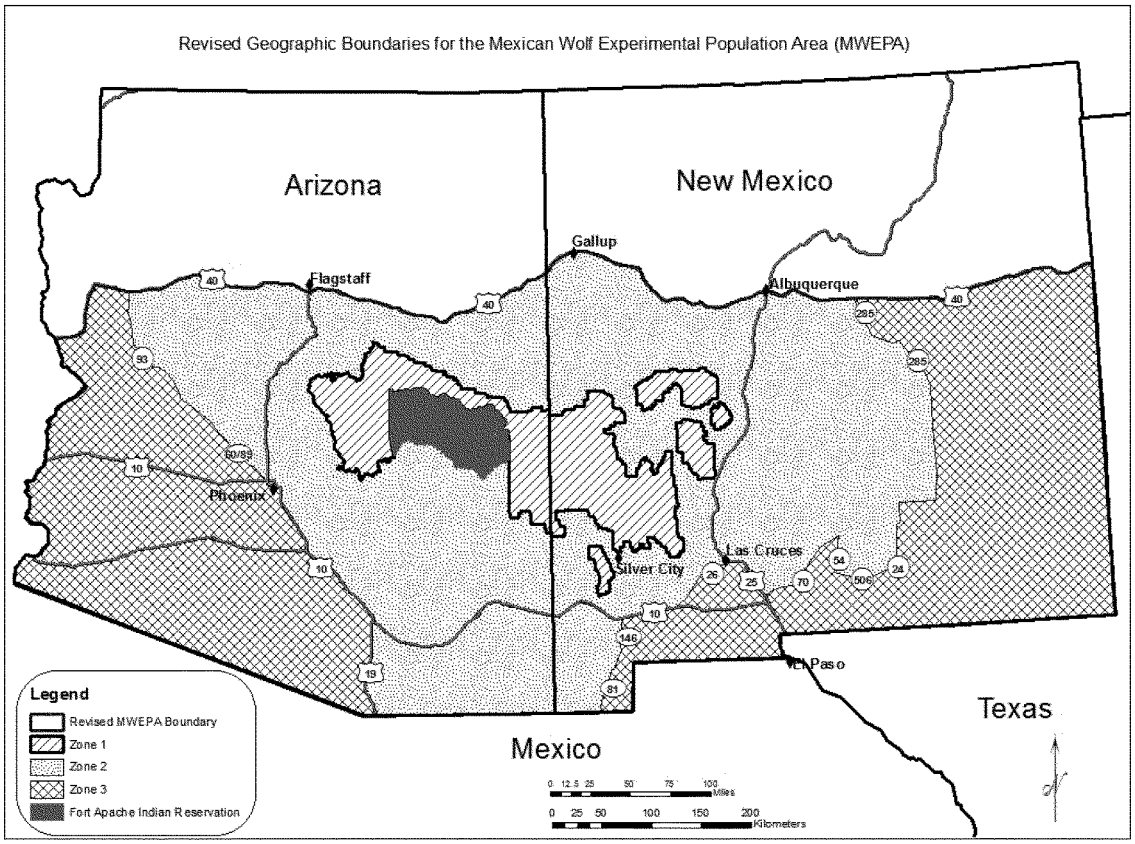
We are now revising the provisions in the June 2013 proposed rule based on information received during the public comment period and our scoping process for the draft environmental impact statement. We solicit public comment as described below.

Public Comments

We will accept written comments and information during this reopened comment period on our proposed revisions to the existing nonessential experimental population designation of the Mexican wolf (*Canis lupus baileyi*), our draft environmental impact statement, and the amended required determinations provided in this document. Any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American tribes, the scientific community, industry, general public, and other interested parties concerning the revised proposed revision. We are particularly interested in comments concerning the following revisions to our proposed rule:

(1) Moving the southern boundary of the Mexican Wolf Experimental Population Area (MWEPA) in Arizona and New Mexico from Interstate Highway 10 to the United States-Mexico international border (Figure 2).

Figure 2—Proposed revised geographic boundaries for the Mexican wolf experimental population area (MWEPA).



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(2) Identifying Zones 1, 2, and 3 as different management areas within the MWEPA and discontinuing the use of the term Blue Range Wolf Recovery Area (BRWRA) part of (Figure 2).

Zone 1 is an area within the MWEPA in Arizona and New Mexico where Mexican wolves may be initially released or translocated, and includes all of the Apache, Gila, and Sitgreaves National Forests; the Payson, Pleasant Valley, and Tonto Basin Ranger Districts of the Tonto National Forest; and the Magdalena Ranger District of the Cibola National Forest.

Zone 2 is an area within the MWEPA where Mexican wolves will be allowed to naturally disperse into and occupy, and where Mexican wolves may be translocated. On Federal land in Zone 2, initial releases of Mexican wolves are limited to pups less than 5 months old, which allows for the cross-fostering of pups from the captive population into the wild, as well as enables translocation-eligible adults to be re-released with pups born in captivity. On private and tribal land in Zone 2, Mexican wolves of any age, including adults, can also be initially released under a Service- and State-approved management agreement with private landowners or a Service-approved management agreement with tribal agencies. The northern boundary of Zone 2 is Interstate Highway 40; the western boundary goes south from Interstate Highway 40 and follows Arizona State Highway 93, Arizona State Highway 89/60, Interstate Highway 10, and Interstate Highway 19 to the United States-Mexico international border; the southern boundary is the United States-Mexico international border heading east, then follows New Mexico State Highway 81/146 north to Interstate Highway 10, then along New Mexico State Highway 26 to Interstate Highway 25; the boundary continues along New Mexico State Highway 70/54/506/24; the eastern boundary follows the eastern edge of Otero County, New Mexico, to the north and then along the eastern edge of Lincoln County, New Mexico, until it intersects with New Mexico State Hwy 285 and follows New Mexico State Highway 285 north to the northern boundary of Interstate Highway 40. Zone 2 excludes the area in Zone 1.

Zone 3 is an area within the MWEPA where neither initial releases nor translocations will occur, but Mexican wolves will be allowed to disperse into and occupy. Zone 3 is an area of less suitable Mexican wolf habitat and where Mexican wolves will be more actively managed under the authorities of this rule to reduce human conflict. We expect Mexican wolves to occupy areas of suitable habitat where ungulate populations are adequate to support them and conflict with humans and their livestock would be low. If Mexican wolves move outside areas of suitable habitat, they will be more actively managed. Zone 3 is two separate geographic areas on the east and west sides of the MWEPA. One area of Zone 3 is in western Arizona and the other in eastern New Mexico. In Arizona, the northern boundary of Zone 3 is Interstate Highway 40; the eastern boundary goes south from Interstate Highway 40 and follows State Highway 93, State Highway 89/60, Interstate

Highway 10, and Interstate Highway 19 to the United States-Mexico international border; the southern boundary is the United States-Mexico international border; the western boundary is the Arizona-California State border. In New Mexico, the northern boundary is Interstate Highway 40; the eastern boundary is the New Mexico-Texas State border; the southern boundary is the United States-Mexico international border heading west, then follows State Highway 81/146 north to Interstate Highway 10, then along State Highway 26 to Interstate Highway 25, the southern boundary continues along State Highway 70/54/506/24; the western boundary follows the eastern edge of Otero County to the north and then along the eastern edge of Lincoln County until it follows State Highway 285 north to the northern boundary of Interstate Highway 40.

(3) Adding definitions for the terms cross-fostering; designated agency; disturbance-causing land-use activity; domestic animal; Federal land; feral dog; in the act of biting, killing, or wounding; initial release; intentional harassment; non-Federal land; Service-approved management plan; translocate; tribal trust land; ungulate herd; wounded; and Zones 1, 2, and 3.

(4) Revising the due care criteria with regard to trapping activities. With regard to trapping activities, due care includes: Following the regulations, proclamations, recommendations, guidelines, and/or laws within the State or tribe where the trapping takes place; modifying or utilizing appropriate size traps, chains, drags, and stakes to reasonably expect to prevent a wolf from either breaking the chain, or escaping with the trap on the wolf, or utilizing sufficiently small traps (less than Victor 2) to reasonably expect the wolf to either immediately pull free from the trap, or span the jaw spread when stepping on the trap; reporting the capture of a Mexican wolf (even if the wolf has pulled free) within 24 hours to the Service; not taking a Mexican wolf via neck snares; and if a Mexican wolf is captured, trappers can call the Interagency Field Team (1–888–459–WOLF [9653]) as soon as possible to arrange for radio-collaring and releasing of the wolf. Per State regulations for releasing nontarget animals, trappers may also choose to release the animal alive and subsequently contact the Service or Interagency Field Team.

(5) On non-Federal lands anywhere within the MWEPA, domestic animal owners or their agents may take (including kill or injure) any Mexican wolf that is in the act of biting, killing, or wounding a domestic animal provided that evidence of a freshly wounded or killed domestic animal by a Mexican wolf is present. This take must be reported to the Service's Mexican Wolf Recovery Coordinator or a designated agency of the Service within 24 hours. The take of any Mexican wolf without evidence of biting, killing, or wounding a domestic animal may be referred to the appropriate authorities for investigation.

(6) Based on the Service's or a designated agency's discretion and during or after a removal action authorized by the Service or a designated agency (provided the Service's or designated agency's actions were unsuccessful), the Service or designated agency may issue permits to domestic animal owners or their agents (e.g., employees, land manager, local officials) to allow domestic animal owners or their agents to take (including intentional harassment or killing) any Mexican wolf that is present on non-Federal land where specified in the permit. Permits issued under this provision will specify the number of days for which the permit is valid and the maximum number of Mexican wolves for which take is allowed. Take by permittees under this provision will assist the Service or designated agency in completing control actions. Domestic animal owners or their agents must report this take to the Service's Mexican Wolf Recovery Coordinator or a designated agency of the Service within 24 hours.

(7) Based on the Service's or a designated agency's discretion and during or after a removal action authorized by the Service or a designated agency (provided the Service's or designated agency's actions were unsuccessful), the Service or designated agency may issue permits to domestic animal owners or their agents (e.g., employees, land manager, local officials) to allow livestock owners or their agents to take (including intentional harassment or killing) any Mexican wolf that is in the act of biting, killing, or wounding livestock on Federal land. Permits issued under this provision will specify the number of days for which the permit is valid and the maximum number of Mexican wolves for which take is allowed. Take by livestock owners or their agents under this provision will assist the Service or designated agency in completing the authorized control action. Livestock owners or their agents must report this take to the Service's Mexican Wolf Recovery Coordinator or a designated agency of the Service within 24 hours.

(8) Allowing for take of Mexican wolves response to impacts to wild ungulates and in accordance with certain stipulations. If Arizona or New Mexico determines, based on established ungulate management goals, that Mexican wolf predation is having an unacceptable impact on a wild ungulate herd (pronghorn, bighorn sheep, deer, elk, or bison), the respective State may request approval from the Service that Mexican wolves be removed from the area of the impacted ungulate herd. Upon written approval from the Service, the State (Arizona or New Mexico) or any designated agency may be authorized to remove (capture and translocate in the MWEPA, move to captivity, transfer to Mexico, or lethally take) Mexican wolves. Because tribes are able to request the capture and removal of Mexican wolves at any time, take in response to wild ungulate impacts is not applicable on tribal trust lands.

We will consider all comments and information received during the public comment period in preparation of the final rule to revise the existing nonessential experimental population designation of the Mexican wolf and the final environmental impact statement. Accordingly, the final rule and final environmental impact statement may differ from this proposal and the draft environmental impact statement.

Please note that comments merely stating support for or opposition to the actions under consideration without providing supporting information, although noted, will not be considered in making a determination for the final rule.

If you submitted comments or information on the June 13, 2013 (78 FR 35719), proposed revision to the existing nonessential experimental population designation of the Mexican wolf or the August 5, 2013 (78 FR 47268), publication of a notice of intent to prepare an environmental impact statement in conjunction with the proposed rule, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final rule.

You may submit your comments and materials concerning this proposed revision to the nonessential experimental population designation of the Mexican wolf, the draft environmental impact statement, and the amended required determinations provided in this document by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as some of the supporting documentation we used, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0056, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

This document discusses only those topics directly relevant to the modifications we are making to our proposal to revise existing nonessential experimental population designation of the Mexican wolf and the associated draft environmental impact statement. For more information on previous Federal actions concerning the Mexican wolf, refer to the proposed revision to the existing nonessential experimental population designation of the Mexican wolf, which published in the **Federal Register** on June 13, 2013 (78 FR 35719), and is available online at *http://www.regulations.gov* (at Docket Number FWS–R2–ES–2013–0056) or from the Mexican Wolf Recovery Program, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

On June 13, 2013 (78 FR 35719), we published a proposed rule to revise the existing nonessential experimental population designation of the Mexican wolf. That proposal had a 90-day comment period ending September 11, 2013. On August 5, 2013 (78 FR 47268), we published a notice of intent to prepare an environmental impact statement in conjunction with the proposed rule to revise the existing nonessential experimental population designation of the Mexican wolf. That notice of intent to prepare an environmental impact statement had a 45-day comment period ending September 19, 2013. On September 5, 2013 (78 FR 54613), we extended the public comment period on the proposed rule to revise the existing nonessential experimental population designation of the Mexican wolf to end on October 28, 2013, and announced public hearings. On October 28, 2013 (78 FR 64192), we once again extended the public comment period on the proposed rule to revise the existing nonessential experimental population designation of the Mexican wolf to end on December 17, 2013, and announced public hearings on the proposed rule to revise the existing nonessential experimental population designation of the Mexican wolf. We will submit for publication in the **Federal Register** a final rule revising the existing nonessential experimental population of the Mexican wolf on or before January 12, 2015.

Changes From the June 13, 2013, Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf

Based on information received during the public comment period and our scoping process for the draft environmental impact statement, we are proposing several modifications to our June 13, 2013, proposal to revise the existing nonessential experimental population designation of the Mexican wolf. Under section 10(j) of the Act and our regulations at 50 CFR 17.81, the Service may designate as an experimental population a population of endangered or threatened species that has been or will be released into suitable natural habitat outside the species' current natural range. When designating an experimental population, the general regulations that extend most section 9 prohibitions to threatened species do not apply to that species, and the section 10(j) rule contains the prohibitions and exemptions necessary and appropriate to conserve that species. In order to improve implementation and conservation, we are proposing several changes to our proposed rule to revise the section 10(j) rule and management regulations for the Mexican wolves.

Revisions and Considerations From the June 13, 2013, Proposal That Will Not Be Carried Forward Into the Final Rule

In the June 13, 2013 (78 FR 35719), proposed rule to revise the existing nonessential experimental population designation of the Mexican wolf, we proposed that Mexican wolves on State-owned lands within the boundaries of the MWEPA be regulated in the same manner as on lands owned and managed by other public land management agencies. In this modification to our proposal, we have removed any reference that the Service will consider State-owned lands within the boundaries of the MWEPA in the same manner as we consider lands owned and managed by other public land management agencies. In the 1998 final rule that established a Mexican wolf nonessential experimental population (63 FR 1752, January 12, 1998) (1998 Final Rule), management of Mexican wolves on all State-owned lands within the boundary of the MWEPA, but outside of designated wolf recovery areas, were subject to the provisions of private lands. Henceforth, the Service will consider the management of Mexican wolves on State-owned lands within the boundaries of the MWEPA in the same manner and subject to the same provisions of this rule as on non-Federal lands, which is consistent with the 1998 Final Rule.

Additionally in the June 13, 2013 (78 FR 35719), proposed rule, we proposed to modify the provision ''six breeding pairs'' to a requirement that at least 100 Mexican wolves must be present in the MWEPA before a permit to take Mexican wolves can be issued to livestock owners or agents on public land grazing allotments. The 1998 Final Rule included a definition of breeding pair as one of the conditions for take of Mexican wolves by livestock owners or agents on public land grazing allotments (i.e., that there must be six breeding pairs present in order for a permit to take wolves to be issued by the Service). In the June 13, 2013 (78 FR 35719), proposed rule we considered overall population size to be a better metric for evaluating the appropriateness of providing such permits because it provided a more consistent measure of the population's status. However, based on scientific information that was submitted during public comment, we are no longer using six breeding pairs or at least 100 Mexican wolves as conditions for issuing a permit to livestock owners or their agents on Federal lands. Now, we are proposing to allow livestock owners or their agents to take (including intentional harassment or killing) any Mexican wolf that is in the act of biting, killing, or wounding livestock on Federal land be based on the Service's or a designated agency's discretion and during or after a removal action has been authorized by the Service or a designated agency (provided the Service's or designated agency's actions were unsuccessful).

Also in the June 13, 2013 (78 FR 35719), preamble to our proposed rule to revise the existing nonessential experimental population designation of the Mexican wolf, we considered several additional revisions. One of the

considerations was to change the term ''depredation'' to ''depredation incident'' and revise the definition to mean, ''The aggregate number of livestock killed or mortally wounded by an individual Mexican wolf or single pack of Mexican wolves at a single location within one 24-hour period, beginning with the first confirmed kill or injury.'' We considered this change in order to provide consistency with terms used in our management documents (standard operating protocol, management plans, etc.), in which we consider all of the depredations that occur within one 24-hour period as one incident in our determination of what management actions to apply to a given situation. However, we received public comment, particularly from the ranching community, that this term does not appropriately communicate individual depredations (e.g., a wolf may have depredated three times in one 24-hour period). In addition, we are using the term ''depredation'' only in our definition of problem wolves. Therefore, we will no longer consider changing the term ''depredation'' to ''depredation incident'' and will use the term ''depredation'' only as defined in the rule portion of this document.

Below, we discuss the additional modifications to our proposal to revise the existing nonessential experimental population designation of the Mexican wolf.

Additional or Revised Definitions for the Proposal To Revise the Mexican Wolf Nonessential Experimental Population

We are adding or revising several definitions to our June 13, 2013 (78 FR 35719), proposed rule to provide additional clarification; definitions for these terms are laid out in the rule portion of this document:

Cross-fostering
Designated agency
Disturbance-causing land-use activity
Domestic animal
Federal land
Feral dog
In the act of biting, killing, or wounding
Initial release
Intentional harassment
Non-Federal land
Service-approved management plan
Translocate
Tribal trust land
Ungulate herd
Wounded
Zone 1
Zone 2
Zone 3

Proposed Revisions to the Geographic Area of the Mexican Wolf Nonessential Experimental Population

We are proposing to expand the MWEPA by moving the southern boundary from Interstate Highway 10 to the United States-Mexico international border across Arizona and New Mexico (Figure 2). Expanding the MWEPA was a recommendation in the Mexican Wolf Blue Range Reintroduction Project 5-Year Review (AMOC and IFT 2005, p. ARC–3). We are proposing this modification because the reintroduction effort for Mexican wolves now being undertaken by the Mexican Government has established a need to manage Mexican wolves that may disperse into southern Arizona and New Mexico from reestablished Mexican wolf populations in Mexico. An expansion of the MWEPA south to the international border with Mexico would allow us to manage all Mexican wolves in this area, regardless of origin, under the experimental population 10(j) rule. The regulatory flexibility provided by our proposed revisions to the 1998 Final Rule would allow us to take management actions within the MWEPA that further the conservation of the Mexican wolf while being responsive to needs of the local community in cases of problem wolf behavior.

Also, we are identifying Zones 1, 2, and 3 as different management areas within the MWEPA and discontinuing the use of the term BRWRA. Zone 1 is where Mexican wolves may be initially released or translocated, and includes all of the Apache, Gila, and Sitgreaves National Forests; the Payson, Pleasant Valley, and Tonto Basin Ranger Districts of the Tonto National Forest; and the Magdalena Ranger District of the Cibola National Forest. Zone 2 is an area within the MWEPA where Mexican wolves will be allowed to naturally disperse into and occupy, and where Mexican wolves may be translocated. On Federal land in Zone 2, initial releases of Mexican wolves are limited to pups less than 5 months old, which allows for the cross-fostering of pups from the captive population into the wild, as well as enables translocation-eligible adults to be re-released with pups born in captivity. On private and tribal land in Zone 2, Mexican wolves of any age, including adults, can also be initially released under a Service- and State-approved management agreement with private landowners or a Service-approved management agreement with tribal agencies. Translocations in Zone 2 will be focused on suitable Mexican wolf habitat that is contiguous to occupied Mexican wolf range. Zone 3 is where neither initial releases nor translocations will occur, but Mexican wolves will be allowed to disperse into and occupy. Zone 3 is an area of less suitable Mexican wolf habitat and where Mexican wolves will be more actively managed under the authorities of this rule to reduce human conflict.

We are also proposing the expansion of initial release sites to include the entire Sitgreaves National Forest in Arizona; the Payson, Pleasant Valley, and Tonto Basin Ranger Districts of the Tonto National Forest in Arizona; and the Magdalena Ranger District of the Cibola National Forest in New Mexico (Figure 2). This expansion would include the proposed modification that would allow for initial releases and translocations throughout Zone 1. Our proposed modification to eliminate the primary and secondary recovery zones within Zone 1 and our consideration of expanding Zone 1 to include the entire Sitgreaves and three Ranger Districts of the Tonto National Forests in Arizona and one Ranger District of the Cibola National Forest in New Mexico are consistent with recommendations in the Mexican Wolf Blue Range Reintroduction Project 5-Year Review (AMOC and IFT 2005, p. ARC–4). These revisions will provide additional area and locations for initial release of Mexican wolves to the wild from captivity beyond that currently allowed by the 1998 Final Rule.

Clarification of Take Provisions From the 1998 Final Rule for the Mexican Wolf Nonessential Experimental Population

In the rule portion of this document, we have clarified take provisions for intentional harassment, opportunistic harassment, take for research purposes, take by Service personnel or designated agency, and unintentional take. In restructuring these allowable forms of take, we have not added more forms of take. Rather, we restructured to clarify take provisions provided in the 1998 Final Rule. We have also revised the due care criteria in regard to trapping activities. And we have provided language to clarify that personnel of the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services will not be in violation of the Act or this rule for take of a Mexican wolf that occurs while conducting official duties associated with predator damage management activities for species other than Mexican wolves.

Furthermore, we have modified provisions in the 1998 Final Rule to allow for removal of Mexican wolves in response to impacts to wild ungulates.

Under this provision, if Arizona or New Mexico determines, based on ungulate management goals, that Mexican wolf predation is having an unacceptable impact on a wild ungulate herd (pronghorn, bighorn sheep, deer, elk, or bison), the respective State may request approval from the Service that Mexican wolves be removed from the area of the impacted ungulate herd. Upon written approval from the Service, the State (Arizona or New Mexico) or any designated agency may be authorized to remove (capture and translocate in the MWEPA, move to captivity, transfer to Mexico, or lethally take) Mexican wolves. These management actions must occur in accordance with § 17.84(k)(7)(iv)(A).

Additional Proposed Provisions to the Mexican Wolf Nonessential Experimental Population

One of the additional provisions we are now proposing is to allow take of a Mexican wolf on non-Federal lands anywhere within the MWEPA by domestic animal owners or their agents when any Mexican wolf is in the act of biting, killing, or wounding a domestic animal provided that evidence of a freshly wounded or killed domestic animal by Mexican wolves is present.

We are also proposing provisions for the issuance of permits on non-Federal land anywhere within the MWEPA, and under particular circumstances, to allow domestic animal owners or their agents to take (including intentional harassment or kill) any Mexican wolf that is present on non-Federal land. Permits issued under this provision specify the number of days for which the permit is valid and the maximum number of Mexican wolves for which take is allowed. Take by permittees under this provision will assist the Service or designated agency in completing control actions. Domestic animal owners or their agents must report this take to the Service's Mexican Wolf Recovery Coordinator or a designated agency of the Service within 24 hours.

Lastly, we have added reporting requirements which clarify that, unless otherwise specified in this rule or in a permit, any take of a Mexican wolf must be reported to the Service or our designated agency within 24 hours.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we conducted peer review on our June 2013 rule. Due to the revisions, we will again seek expert opinions from previous reviewers and independent specialists regarding this revised proposed rule. The purpose of such review is to ensure that our final rule for this species is based on scientifically sound data, assumptions, and analyses. We will send peer reviewers copies of this document immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the reopening of the public comment period, on our use and interpretation of the science used in developing our proposed rule.

We will consider all comments and information we receive during the comment period on the June 13, 2013 (78 FR 35719), proposed rule and this revised proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Required Determinations—Amended

In our June 13, 2013, proposed rule (78 FR 35719), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the draft environmental impact statement. We have now made use of the draft environmental impact statement data to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), and E.O. 12630 (Takings). However, based on the draft economic analysis data, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 801 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include such businesses as manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and forestry and logging operations with fewer than 500 employees and annual business less than $7 million. To determine whether small entities may be affected, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Importantly, the impacts of a rule must be *both* significant and substantial to prevent certification of the rule under the RFA and to require the preparation of an initial regulatory flexibility analysis. If a substantial number of small entities are affected by the proposed rule, but the per-entity economic impact is not significant, the Service may certify. Likewise, if the per-entity economic impact is likely to be significant, but the number of affected entities is not substantial, the Service may also certify.

In the 1998 Final Rule, we found that the nonessential experimental population would not have significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. The 1998 Final Rule set forth management directions and provided for limited

allowable legal take of Mexican wolves within the MWEPA. We concluded that the rule would not significantly change costs to industry or governments. Furthermore, the rule produced no adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. enterprises to compete with foreign-based enterprises in domestic or export markets. We further concluded that no significant direct costs, information collection, or recordkeeping requirements were imposed on small entities by the action and that the rule was not a major rule as defined by 5 U.S.C. 804(2) (63 FR 1752, January 12, 1998).

If this proposed revision to the nonessential experimental population of the Mexican wolf is adopted, the area affected by this rule includes the portion of the States of Arizona and New Mexico from Interstate Highway 40 south to the United States–Mexico international border. This rule proposes activities that have, in part, already been taking place within the BRWRA. However, it expands many of those activities to larger portions of the MWEPA.

In addition, section 7(a)(4) of the Act requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species. However, because a nonessential experimental population is, by definition, not essential to the survival of the species, conferencing will unlikely be required within the MWEPA. Furthermore, the results of a conference are strictly advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities. In addition, section 7(a)(1) requires Federal agencies to use their authorities to carry out programs to further the conservation of listed species, which would apply on any lands within the nonessential experimental population area. As a result, and in accordance with these regulations, some modifications to the proposed Federal actions within the nonessential experimental population area may occur to benefit the Mexican wolf, but we do not expect projects on Federal lands to be halted or substantially modified as a result of these regulations.

On the other hand, this proposed revision would allow Mexican wolves to occupy anywhere within the MWEPA, which has the potential to affect small entities in the area outside the initial release areas. Specifically, small businesses involved in hunting and animal production, such as outfitters, guides, and beef cattle and sheep ranching, may be affected by Mexican wolves preying on wild native ungulates or depredating on domestic animals. We have further assessed these types of impacts to small entities in the area outside the initial release areas in the draft environmental impact statement.

Small businesses involved in ranching and livestock production may be affected by Mexican wolves depredating on domestic animals. Direct effects to small businesses could include foregone calf or cow sales at auctions due to depredations. Indirect effects could include impacts such as increased ranch operation costs for surveillance and oversight of the herd, and weight loss of livestock when wolves are present. Ranchers have also expressed concern that a persistent presence of wolves may negatively impact their property and business values. We do not foresee a significant economic impact to a substantial number of small entities in the ranching and livestock production sector based on the following information.

The Department of Agriculture reported a national estimate of 89.3 million cattle and calves in 2013, which implies that together, Arizona and New Mexico contribute approximately 2.5 percent to the overall national supply (NASS: *http://quickstats.nass.usda.gov*). Over 90 percent of the ranches in Arizona (approximately 6646 out of 7384 ranches) and 80 percent of the ranches in New Mexico (approximately 5336 out of 6670 ranches) could be classified as small with a total number of less than 100 cattle. We estimate there are fewer than 12,000 small ranches in Arizona and New Mexico below Interstate 40 (the project area), based on 2007 Census of Agriculture data by county. This is a significant overestimate of the number of small ranches in the project area because it includes data for counties that are split by Interstate 40 (i.e., only a portion of the counties' ranches occur in the study area), as well as ranches that may occur in Zone 3 where we do not expect wolf occupancy over the project time period. While small ranches represent the majority of the number of ranches in the two States, they produce less than 10 percent of the states' total cattle and calf inventory, or a quarter of one percent of the national inventory. The largest operations, those with an inventory greater than 2,500 cattle, account for over 50 percent of the total states' livestock.

Between 1998 and 2013, on average there were about 56 total depredations (confirmed and unconfirmed) by Mexican wolves in any given year, which equates to about 1.2 cow/calves killed for every Mexican wolf (or 118 depredations for every 100 Mexican wolves). Compared to the 2007 total inventory of cattle (123,124) for the 5 county area of the Mexican wolf initial release area (Graham, Greenlee, and Apache Counties, Arizona, and Catron and Grant Counties, New Mexico) both confirmed and unconfirmed depredations per 100 Mexican wolves account for less than 0.01 percent of the herd size. The economic cost of Mexican wolf depredations in this time period has been a small percentage of the total value of the livestock operations. The average number of cattle killed (both confirmed and unconfirmed) in any given year is estimated to be 118.2 per 100 Mexican wolves. The expected value of these cattle (118.2 cattle killed per 100 Mexican wolves on average for any year) at auction using 2012 prices (most current data available at the time of the analysis) would be about $98,000 dollars. Prices will be updated for the final EIS.

We recognize that annual depredation events have not been, and may not be uniformly distributed across the ranches operating in occupied wolf range. Rather, wolves seem to concentrate in particular areas and to the extent that livestock are targeted by the pack for depredations, some ranch operations will be disproportionately affected. However, while a depredation could disproportionately impact a small ranch compared to a larger ranch (e.g., in lost market value), it is more likely that a depredated cow will belong to a large ranching operation than a small one based on the proportion of cattle associated with ranch size. The annual number of depredations (both confirmed and unconfirmed) is expected to grow from 97 to 335 cows/calves as the Mexican wolf population also grows from 83 to 285 individuals during the period 2013 through 2026. The total economic impact to the ranching community during this period is calculated to be $2.3 million with a net present value of $1.4 million. We would expect to compensate 100 percent of the market value of confirmed depredated cattle and 50 percent of market value for probably kills with payments to affected ranchers from our Mexican Wolf Interdiction Fund, which provides for proactive conservation measures to decrease the likelihood of depredation and for compensation of verified livestock depredations. This impact, spread over a 12-year period, is not both significant and substantial. That is, if impacts are disproportionately felt, the

number of affected ranches will be small but the impact to those affected may be significant. If the impacts are more evenly spread across a greater number of ranches the economic impact to those entities will not be significant.

Small businesses involved in ranching and livestock production may be affected by weight loss of livestock due to the presence of Mexican wolves. For example, livestock may lose weight because wolves force them off of suitable grazing habitat or away from water sources. Livestock may try to protect themselves by staying close together in protected areas where they are more easily able to see approaching wolves and defend themselves and their calves. A consequence of such a behavioral change would likely be weight loss, especially if the wolves are allowed to persist in the area for a significant amount of time. The weight loss would be associated with the cattle's fear of roaming away from the herd to forage. Using a mid-point estimate of 6 percent weight loss for calves at the time of auction (based on available data), we calculated the impact on 2012 model ranches assuming that wolf presence pressures were allowed to persist throughout the foraging year. Based on available studies and reports and under current market prices, a six percent weight loss for calves at the time of sale could result in a total loss of profit for a small ranch and reduce profits for a medium and large ranch on the equivalent of losing five and ten calves for auction from the baseline (an estimated loss of profit of $9,269 for a large ranch). We estimate that only a small proportion of ranches in the project area could be affected by weight loss, given that wolves may not occupy areas near some ranches' livestock during any point of the project time frame (12 years), wolves may not be in the vicinity of some ranches' livestock for the entire foraging season (as assumed in our calculations), and landowners and the Service and our designated agencies have a variety of harassment and take mechanisms available to address wolf-livestock conflicts. Furthermore while such an impact could be significant to an individual small ranch, for the purposes of this certification we do not consider the impact significant because small ranches account for less than 10 percent of the states' total cattle and calf inventory, or a quarter of one percent of the national inventory. Therefore, we do not foresee a significant economic impact to a substantial number of small entities in the ranching and livestock production sector associated with indirect effects of weight loss of livestock when wolves are present.

Small businesses associated with hunting in Arizona and New Mexico could also be affected by implementation of our proposed action. Direct effects to small businesses in this section could occur from impacts to big game populations due to Mexican wolf predation (primarily on elk); loss of hunter visitation to the region, or a decline in hunter success, leading to lost income or increased costs to guides and outfitters. However, we do not have information suggesting that these impacts will occur. Between 1998 and 2012, Arizona Game and Fish Department conducted a study to determine the impact that Mexican wolves have had on deer and elk populations in the Blue Range Wolf Recovery Area. The study found that while Mexican wolves do target elk as their primary prey source, including elk calves during the spring and summer season, there was no discernable impact on the number of elk calves that survive through early fall periods. A similar finding was made for mule deer. The study also reported that the number of elk permits authorized by AGFD has varied since Mexican wolves were reintroduced into Arizona. The study reports that the variation is attributable to a variety of management-related objectives. Elk availability for hunters, however, was not the reason for the decline.

During the project time period, we expect the Mexican wolf density in the MWEPA to be no higher (and more likely, lower) than it is currently and wolf to elk ratios (an indicator of predation pressure) to occur at levels resulting in less than significant biological impacts, suggesting that ungulate populations will not be impacted by Mexican wolves. Furthermore, information suggests that wolves tend to prey on unproductive calf elk and older cow elk, whereas hunters are seeking elk with high reproductive potential. Trends in hunter visitation and success rates since 1998 in the areas where Mexican wolves have been introduced are stable or increasing based on the number of licensed hunters and hunter success rates. We do not have information suggesting these trends would change during the project time period. Therefore, we do not foresee a significant economic impact to a substantial number of small entities associated with hunting activities.

We also considered impacts to the tourism industry from implementation of our proposed action. In this case, impacts to small businesses would be positive, stemming from increased profits associated with wolf-related outdoor recreation opportunities, such as providing eco-tours in Mexican wolf country. However, we do not have information suggesting that wolf presence will create significant (positive) economic impacts to a substantial number of small entities, as very few eco-tours or other ventures have been identified since 1998. Therefore, we do not foresee a significant economic impact to a substantial number of small entities associated with tourism activities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Arizona Game and Fish Department, cooperating agencies, New Mexico Game and Fish Department, stakeholders, published literature and reports, and the Service. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed revision to the existing nonessential experimental population designation of the Mexican wolf would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Paperwork Reduction Act

We may not conduct or sponsor and the public is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB has reviewed and approved our collection of information associated with reporting the taking of experimental populations (50 CFR 17.84) and assigned OMB Control Number 1018–0095. The OMB has also approved the collection of information associated with endangered and threatened species permit applications and reports and assigned OMB Control Number 1018–0094, which expires January 31, 2017. This proposal contains a requirement to prepare a science based document in order to obtain Service authorization to remove Mexican wolves in response to impacts to wild ungulates. Because this requirement applies only to two States, OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required.

Draft Environmental Impact Statement

The purpose of the draft environmental impact statement, prepared under the National Environmental Policy Act (NEPA) (42

U.S.C. 4321 *et seq.*), is to identify and disclose the environmental consequences resulting from the proposed action of revising the existing nonessential experimental population designation of the Mexican wolf. In the draft environmental impact statement, four alternatives are evaluated: Alternative One (BRWRA Expansion; MWEPA Expansion with Management Zone; Modified Provisions for Take of Mexican Wolves); Alternative Two (MWEPA Expansion with Management Zones; Modified Provisions for Take of Mexican Wolves); Alternative Three (BRWRA Expansion; MWEPA Expansion with Management Zones); and Alternative Four (No Action).

The no action alternative is required by NEPA for comparison to the other alternatives analyzed in the draft environmental impact statement. Our preliminary determination is that revising the existing nonessential experimental population designation of the Mexican wolf will not have significant impacts on the environment. However, we will further evaluate this issue as we complete our final environmental impact statement.

As we stated earlier, we are soliciting data and comments from the public on the draft environmental impact statement, as well as all aspects of the proposed rule. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the comment period on the environmental consequences resulting from our revision of the existing nonessential experimental population designation.

Management of Wolves Outside the Mexican Wolf Nonessential Experimental Population Area

For Mexican wolves that occur outside the MWEPA, the Act (16 U.S.C. 1531 *et seq.*) prohibits activities with endangered and threatened species unless a Federal permit allows such activities. Along with our implementing regulations at 50 CFR part 17, the Act provides for permits, and requires that we invite public comment before issuing these permits. A permit granted by us under section 10(a)(1)(A) of the Act authorizes activities with U.S. endangered or threatened species for scientific purposes, enhancement of survival or propagation, or interstate commerce. Our regulations regarding implementation of section 10(a)(1)(A) permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

As part of this rulemaking process, we have drafted a section 10(a)(1)(A) permit to allow for certain activities with Mexican wolves that occur outside the MWEPA. In compliance with NEPA (42 U.S.C. 4321 *et seq.*), we have included analysis of the environmental effects of the draft permit as part of our draft EIS. This draft section 10(a)(1)(A) permit is attached as an appendix in the draft EIS. Both the Act and the National Environmental Policy Act require that we invite public comment before issuing these permits. Therefore, we invite local, State, tribal, and Federal agencies, and the public to comment on the draft section 10(a)(1)(A) permit.

Authors

The primary authors of this document are the staff members of the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 78 FR 35719 (June 13, 2013) set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. Amend § 17.84 by revising paragraph (k) to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(k) Mexican wolf (*Canis lupus baileyi*). This paragraph (k) sets forth the provisions of a rule to establish an experimental population of Mexican wolves.

(1) *Purpose of the rule:* The Service finds that reestablishment of an experimental population of Mexican wolves into the subspecies' probable historical range will further the conservation of the Mexican wolf subspecies. The Service also finds that the experimental population is not essential under § 17.81(c)(2).

(2) *Determinations:* The Mexican wolf population reestablished in the Mexican Wolf Experimental Population Area (MWEPA), identified in paragraph (k)(4) of this section, is one nonessential experimental population. This nonessential experimental population will be managed according to the provisions of this rule. The Service does not intend to change the nonessential experimental designation to essential experimental, threatened, or endangered. Critical habitat cannot be designated under the nonessential experimental classification, 16 U.S.C. 1539(j)(2)(C)(ii).

(3) *Definitions*—Key terms used in this rule have the following definitions:

Active den means a den or a specific site above or below ground that is used by Mexican wolves on a daily basis to raise pups, typically between March 1 and July 31. More than one den site may be used in a single season.

Cross-fostering means offspring that are removed from their biological parents and placed with surrogate parents.

Depredation means the confirmed killing or wounding of lawfully present domestic animals by one or more wolves. The Service, Wildlife Services, or other Service-designated agencies will confirm cases of wolf depredation on lawfully present domestic animals.

Designated agency means a Federal, State, or tribal agency designated by the Service to assist in implementing this rule, all or in part, consistent with a Service-approved management plan, special management measure, conference opinion pursuant to section 7(a)(4) of the Act, section 6 of the Act as authorized pursuant to § 17.31 for State wildlife agencies with authority to manage Mexican wolves, or a valid permit issued by the Service under § 17.32.

Disturbance-causing land-use activity means any activity on Federal lands that the Service determines could adversely affect reproductive success, natural behavior, or persistence of Mexican wolves. Such activities may include, but are not limited to—timber or wood harvesting, prescribed fire, mining or mine development, camping outside designated campgrounds, livestock drives, off-road vehicle use, hunting, and any other use or activity with the potential to disturb wolves. The following activities are specifically excluded from this definition:

(i) Lawfully present livestock and use of water sources by livestock;

(ii) Livestock drives if no reasonable alternative route or timing exists;

(iii) Vehicle access over established roads to non-Federal land where legally permitted activities are ongoing if no reasonable alternative route exists;

(iv) Use of lands within the National Park or National Wildlife Refuge Systems as safety buffer zones for

military activities and Department of Homeland Security border security activities;

(v) Fire-fighting activities associated with wildfires; and

(vi) Any authorized, specific land use that was active and ongoing at the time Mexican wolves chose to locate a den or rendezvous site nearby.

Domestic animal means livestock as defined in paragraph (k)(3) of this section and non-feral dogs.

Federal land means land owned and under the administration of Federal agencies including, but not limited to, the Service, National Park Service, Bureau of Land Management, U.S. Forest Service, Department of Energy, or Department of Defense.

Feral dog means any dog (*Canis familiaris*) or wolf-dog hybrid that, because of absence of physical restraint or conspicuous means of identifying it at a distance as non-feral, is reasonably thought to range freely over a rural landscape without discernible, proximate control by any person. Feral dogs do not include domestic dogs that are penned, leashed, or otherwise restrained (e.g., by shock collar) or which are working livestock or being lawfully used to trail or locate wildlife.

Harass means intentional or negligent actions or omissions that create the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering.

In the act of biting, killing, or wounding means grasping, biting, attacking, wounding, or feeding upon a live domestic animal on non-Federal land or live livestock on Federal land. The term does not include a Mexican wolf feeding on an animal carcass.

Initial release means releasing Mexican wolves to the wild within Zone 1, or in accordance with tribal or private land agreements in Zone 2, that have never been in the wild, or releasing pups that have never been in the wild and are less than 5 months old within Zones 1 or 2. The initial release of pups less than 5 months old into Zone 2 allows for the cross-fostering of pups from the captive population into the wild, as well as enables translocation-eligible adults to be re-released in Zone 2 with pups born in captivity.

Intentional harassment means deliberate, pre-planned harassment of Mexican wolves, including by less-than-lethal means (such as 12-gauge shotgun rubber-bullets and bean-bag shells) designed to cause physical discomfort and temporary physical injury, but not death. Intentional harassment includes situations where the Mexican wolf or wolves may have been unintentionally attracted, or intentionally tracked, waited for, chased, or searched out; and then harassed. Intentional harassment of Mexican wolves is only allowed under a permit issued by the Service or its designated agency.

Livestock means domestic alpacas, bison, burros (donkeys), cattle, goats, horses, llamas, mules, and sheep, or other domestic animals defined as livestock in Service-approved State and tribal Mexican wolf management plans. Poultry is not considered livestock under this rule.

Mexican Wolf Experimental Population Area (MWEPA) means an area in Arizona and New Mexico including Zones 1, 2, and 3, that lies south of Interstate Highway 40 to the international border with Mexico.

Non-Federal land means any private, State-owned, or tribal trust land.

Occupied Mexican wolf range means an area of confirmed presence of Mexican wolves based on the most recent map of occupied range posted on the Service's Mexican Wolf Recovery Program Web site at *http://www.fws.gov/southwest/es/mexicanwolf/*. Specific to Prohibitions (5)(iii) of this rule, Zone 3 and tribal trust lands are not considered occupied range.

Opportunistic harassment means scaring any Mexican wolf from the immediate area by taking actions such as discharging firearms or other projectile-launching devices in proximity to but not in the direction of the wolf, throwing objects at it, or making loud noise in proximity to it. Such harassment might cause temporary, non-debilitating physical injury, but is not reasonably anticipated to cause permanent physical injury or death. Opportunistic harassment of Mexican wolves can occur without a permit issued by the Service or its designated agency.

Problem wolves mean Mexican wolves that, for purposes of management and control by the Service or its designated agent(s), are:

(i) Individuals or members of a group or pack (including adults, yearlings, and pups greater than 4 months of age) that were directly involved in a depredation on lawfully present domestic animals; or

(ii) Habituated to humans, human residences, or other facilities regularly occupied by humans.

Rendezvous site means a gathering and activity area regularly used by Mexican wolf pups after they have emerged from the den. Typically, these sites are used for a period ranging from about 1 week to 1 month in the first summer after birth during the period from June 1 to September 30. Several rendezvous sites may be used in succession within a single season.

Service-approved management plan means management plans approved by the Regional Director or Director of the Service through which Federal, State, or tribal agencies may become a designated agency. The management plan must address how Mexican wolves will be managed to achieve conservation goals in compliance with the Act, this 10(j) nonessential experimental population rule, and other Service policies. If a Federal, State, or tribal agency becomes a designated agency through a Service-approved management plan, the Service will help coordinate their activities while retaining authority for program direction, oversight, and guidance.

Take means to 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(19)).

Translocate means to release Mexican wolves into the wild that have previously been in the wild. In the MWEPA, translocations will occur only in Zones 1 and 2.

Tribal trust land means any lands title to which is either: held in trust by the United States for the benefit of any Indian tribe or individual; or held by any Indian tribe or individual subject to restrictions by the United States against alienation. For purposes of this rule, tribal trust land does not include land purchased in fee title by a tribe. We consider fee simple land purchased by tribes to be private land.

Unintentional take means take that occurs despite the use of due care, is coincidental to an otherwise lawful activity, and is not done on purpose. Taking a Mexican wolf by poisoning or shooting will not be considered unintentional take.

Ungulate herd means an assemblage of wild ungulates living in a given area.

Wounded means exhibiting scraped or torn hide or flesh, bleeding, or other evidence of physical damage caused by a Mexican wolf bite.

Zone 1 means an area within the MWEPA in Arizona and New Mexico where Mexican wolves may be initially released from captivity or translocated. Zone 1 includes all of the Apache, Gila, and Sitgreaves National Forests; the Payson, Pleasant Valley, and Tonto Basin Ranger Districts of the Tonto National Forest; and the Magdalena Ranger District of the Cibola National Forest.

Zone 2 is an area within the MWEPA where Mexican wolves will be allowed to naturally disperse into and occupy,

and where Mexican wolves may be translocated. On Federal land in Zone 2, initial releases of Mexican wolves are limited to pups less than 5 months old, which allows for the cross-fostering of pups from the captive population into the wild, as well as enables translocation-eligible adults to be re-released with pups born in captivity. On private and tribal land in Zone 2, Mexican wolves of any age, including adults, can also be initially released under a Service- and State-approved management agreement with private landowners or a Service-approved management agreement with tribal agencies. The northern boundary of Zone 2 is Interstate Highway 40; the western boundary goes south from Interstate Highway 40 and follows Arizona State Highway 93, Arizona State Highway 89/60, Interstate Highway 10, and Interstate Highway 19 to the United States-Mexico international border; the southern boundary is the United States-Mexico international border heading east, then follows New Mexico State Highway 81/146 north to Interstate Highway 10, then along New Mexico State Highway 26 to Interstate Highway 25; the boundary continues along New Mexico State Highway 70/54/506/24; the eastern boundary follows the eastern edge of Otero County, New Mexico, to the north and then along the eastern edge of Lincoln County, New Mexico, until it intersects with New Mexico State Hwy 285 and follows New Mexico State Highway 285 north to the northern boundary of Interstate Highway 40. Zone 2 excludes the area in Zone 1.

Zone 3 means an area within the MWEPA where neither initial releases nor translocations will occur, but Mexican wolves will be allowed to disperse into and occupy. Zone 3 is an area of less suitable Mexican wolf habitat and where Mexican wolves will be more actively managed under the authorities of this rule to reduce human conflict. We expect Mexican wolves to occupy areas of suitable habitat where ungulate populations are adequate to support them and conflict with humans and their livestock is low. If Mexican wolves move outside areas of suitable habitat, they will be more actively managed. Zone 3 is two separate geographic areas on the east and west sides of the MWEPA. One area of Zone 3 is in western Arizona and the other in eastern New Mexico. In Arizona, the boundaries of Zone 3 are the northern boundary is Interstate Highway 40; the eastern boundary goes south from Interstate Highway 40 and follows State Highway 93, State Highway 89/60, Interstate Highway 10, and Interstate Highway 19 to the United States-Mexico international border; the southern boundary is the United States-Mexico international border; the western boundary is the Arizona-California State border. In New Mexico, the northern boundary is Interstate Highway 40; the eastern boundary is the New Mexico-Texas State border; the southern boundary is the United States-Mexico international border heading west, then follows State Highway 81/146 north to Interstate Highway 10, then along State Highway 26 to Interstate Highway 25, the southern boundary continues along State Highway 70/54/506/24; the western boundary follows the eastern edge of Otero County to the north and then along the eastern edge of Lincoln County until it follows State Highway 285 north to the northern boundary of Interstate Highway 40.

(4) *Designated area:* The designated experimental population area for Mexican wolves classified as a nonessential experimental population by this rule is described in this paragraph (k)(4). The designated experimental population area is within the subspecies' probable historical range and is wholly separate geographically from the current range of any known Mexican wolves or other gray wolves. The boundaries of the MWEPA are the portion of Arizona and New Mexico that lies south of Interstate Highway 40 to the international border with Mexico. A map of the MWEPA follows:

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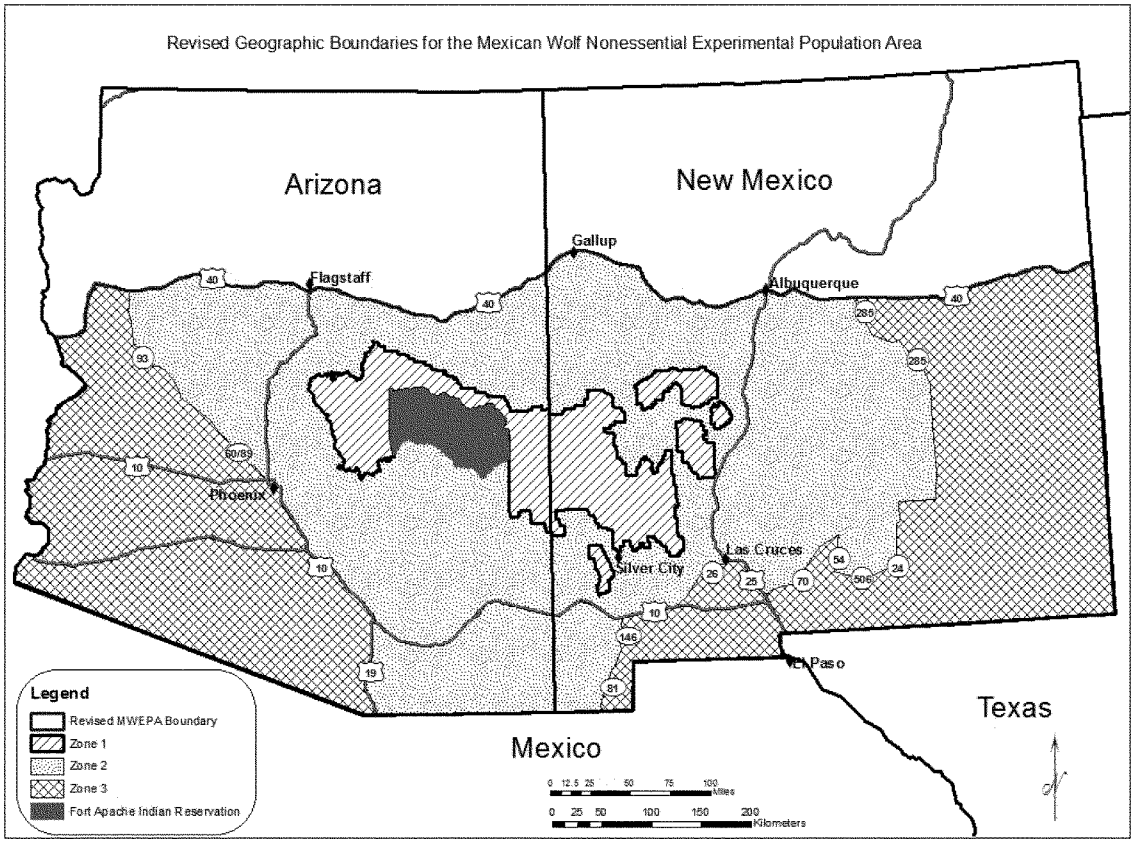

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(5) *Prohibitions:* Take of any Mexican wolf in the wild within the MWEPA is prohibited, except as provided in paragraph (k)(6) of this section. Specifically, the following actions are prohibited by this rule:

(i) No person may possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any Mexican wolf or wolf part from the experimental population except as authorized in this rule or by a valid permit issued by the Service under § 17.32. If a person kills or injures a Mexican wolf or finds a dead or injured wolf or wolf parts, the person must not disturb them (unless instructed to do so by the Service or a designated agency), must minimize disturbance of the area around them, and must report the incident to the Service's Mexican Wolf Recovery Coordinator or a designated agency of the Service within 24 hours.

(ii) No person may attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this rule.

(iii) Taking a Mexican wolf with a trap, snare, or other type of capture device within occupied Mexican wolf range is prohibited (except as authorized in paragraph (k)(6)(iv) of this section) and will not be considered unintentional take, unless due care was exercised to avoid injury or death to a wolf. With regard to trapping activities, due care includes:

(A) Following the regulations, proclamations, recommendations, guidelines, and/or laws within the State or tribal trust lands where the trapping takes place.

(B) Modifying or utilizing appropriately sized traps, chains, drags, and stakes to reasonably expect to prevent a wolf from either breaking the chain, or escaping with the trap on the wolf, or utilizing sufficiently small traps (less than or equal to a Victor #2) to reasonably expect the wolf to either immediately pull free from the trap, or span the jaw spread when stepping on the trap.

(C) Not taking a Mexican wolf via neck snares.

(D) Reporting the capture of a Mexican wolf (even if the wolf has pulled free) within 24 hours to the Service.

(E) If a Mexican wolf is captured, trappers can call the Interagency Field Team (1–888–459–WOLF [9653]) as soon as possible to arrange for radio-collaring and releasing of the wolf. Per State regulations for releasing nontarget animals, trappers may also choose to release the animal alive and subsequently contact the Service or Interagency Field Team.

(6) *Reporting requirements.* Unless otherwise specified in this rule or in a permit, any take of a Mexican wolf must be reported to the Service or a designated agency within 24 hours. We will allow additional reasonable time if access to the site is limited. Report any take of Mexican wolves, including opportunistic harassment, to the Mexican Wolf Recovery Program, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Road, NE., Albuquerque, NM 87113; by telephone 505–761–4748; or by facsimile 505–346–2542. Additional contact information can also be found on the Mexican Wolf Recovery Program's Web site at *http://www.fws.gov/southwest/es/mexicanwolf/.* Unless otherwise specified in a permit, any wolf or wolf part taken legally must be turned over to the Service, which will determine the disposition of any live or dead wolves.

(7) *Allowable forms of take of Mexican wolves:* Take of Mexican wolves in the MWEPA are allowed as follows:

(i) *Take in defense of human life.* Under section 11(a)(3) of the Act and § 17.21(c)(2), any person may take (which includes killing as well as nonlethal actions such as harassing or harming) a Mexican wolf in self-defense or defense of the lives of others. This

take must be reported as specified in accordance with paragraph (k)(6) of this section. If the Service or a designated agency determines that a Mexican wolf presents a threat to human life or safety, the Service or the designated agency may kill the wolf or place it in captivity.

(ii) *Opportunistic harassment.* Anyone may conduct opportunistic harassment of any Mexican wolf at any time provided that Mexican wolves are not purposefully attracted, tracked, searched out, or chased and then harassed. Such harassment of Mexican wolves might cause temporary, non-debilitating physical injury, but is not reasonably anticipated to cause permanent physical injury or death. Any form of opportunistic harassment must be reported as specified in accordance with paragraph (k)(6) of this section.

(iii) *Intentional harassment.* After the Service or its designated agency has confirmed Mexican wolf presence on any land within the MWEPA, the Service or its designated agency may issue permits valid for not longer than 1 year, with appropriate stipulations or conditions, to allow intentional harassment of Mexican wolves. The harassment must occur in the area and under the conditions specifically identified in the permit. Permittees must report this take as specified in accordance with paragraph (k)(6) of this section.

(iv) *Take on non-Federal lands.*

(A) On non-Federal lands anywhere within the MWEPA, domestic animal owners or their agents may take (including kill or injure) any Mexican wolf that is in the act of biting, killing, or wounding a domestic animal, as defined in paragraph (k)(3) of this section, provided that evidence of freshly wounded or killed domestic animals by Mexican wolves is present. This take must be reported as specified in accordance with paragraph (k)(6) of this section. The take of any Mexican wolf without evidence of biting, killing, or wounding domestic animals may be referred to the appropriate authorities for investigation.

(B) Take of Mexican wolves by livestock guarding dogs, when used in the traditional manner to protect livestock on non-Federal lands, is allowed. If such take by a guard dog occurs, it must be reported as specified in accordance with paragraph (k)(6) of this section.

(C) Based on the Service's or a designated agency's discretion and during or after a removal action authorized by the Service or a designated agency (provided the Service's or designated agency's actions were unsuccessful), the Service or designated agency may issue permits to domestic animal owners or their agents (e.g., employees, land manager, local officials) to take (including intentional harassment or killing) any Mexican wolf that is present on non-Federal land where specified in the permit. Permits issued under this provision will specify the number of days for which the permit is valid and the maximum number of Mexican wolves for which take is allowed. Take by permittees under this provision will assist the Service or designated agency in completing control actions. Domestic animal owners or their agents must report this take as specified in accordance with paragraph (k)(6) of this section.

(v) *Take on Federal land.*

(A) Based on the Service's or a designated agency's discretion and during or after a removal action authorized by the Service or a designated agency (provided the Service's or designated agency's actions were unsuccessful), the Service or designated agency may issue permits to livestock owners or their agents (e.g., employees, land manager, local officials) to take (including intentional harassment or killing) any Mexican wolf that is in the act of biting, killing, or wounding livestock on Federal land where specified in the permit. Permits issued under this provision will specify the number of days for which the permit is valid and the maximum number of Mexican wolves for which take is allowed. Take by permittees under this provision will assist the Service or designated agency in completing control actions. Livestock owners or their agents must report this take as specified in accordance with paragraph (k)(6) of this section.

(B) Take of Mexican wolves by livestock guarding dogs, when used in the traditional manner to protect livestock on Federal lands, is allowed. If such take by a guard dog occurs, it must be reported as specified in accordance with paragraph (k)(6) of this section.

(C) This provision does not exempt Federal agencies and their contractors from complying with sections 7(a)(1) and 7(a)(4) of the Act, the latter of which requires a conference with the Service if they propose an action that is likely to jeopardize the continued existence of the Mexican wolf. In areas within the National Park System and National Wildlife Refuge System, Federal agencies must treat Mexican wolves as a threatened species for purposes of complying with section 7 of the Act.

(vi) *Take in response to impacts to wild ungulates.* If Arizona or New Mexico determines, based on ungulate management goals, that Mexican wolf predation is having an unacceptable impact on a wild ungulate herd (pronghorn, bighorn sheep, deer, elk, or bison), the respective State may request approval from the Service that Mexican wolves be removed from the area of the impacted ungulate herd. Upon written approval from the Service, the State (Arizona or New Mexico) or any designated agency may be authorized to remove (capture and translocate in the MWEPA, move to captivity, transfer to Mexico, or lethally take) Mexican wolves. These management actions must occur in accordance with the following provisions:

(A) Arizona or New Mexico must prepare a science-based document that:

(*1*) Describes what data indicate that the ungulate herd is below management objectives, what data indicate that the impact on the ungulate herd is influenced by Mexican wolf predation, why Mexican wolf removal is a warranted solution to help restore the ungulate herd to State management objectives, the type (level and duration) of Mexican wolf removal management action being proposed, and how ungulate herd response to wolf removal will be measured and control actions adjusted for effectiveness;

(*2*) Demonstrates that attempts were and are being made to identify other causes of ungulate herd declines and possible remedies or conservation measures in addition to wolf removal;

(*3*) If appropriate, identifies areas of suitable habitat for Mexican wolf translocation; and

(*4*) Has been subjected to peer review and public comment prior to its submittal to the Service for written concurrence. In order to comply with this requirement, the State must:

(*i*) Conduct the peer review process in conformance with the Office of Management and Budget's most recent Final Information and Quality Bulletin for Peer Review and include in their proposal an explanation of how the bulletin's standards were considered and satisfied; and

(*ii*) Obtain at least three independent peer reviews from individuals with relevant expertise other than staff employed by the State (Arizona or New Mexico) requesting approval from the Service that Mexican wolves be removed from the area of the impacted ungulate herd.

(B) Before the Service will allow Mexican wolf removal in response to impacts to wild ungulates, the Service will evaluate the information provided

by the requesting State (Arizona or New Mexico) and provide a written determination to the requesting State agency whether such actions are scientifically based and warranted.

(C) If all of the provisions above are met, the Service will, to the maximum extent allowable under the Act, make a determination providing for Mexican wolf removal. If the request is approved, the Service will include in the written determination which management action (capture and translocate in MWEPA, move to captivity, transfer to Mexico, lethally take, or no action) is most appropriate for the conservation of the Mexican wolf subspecies.

(D) Because tribes are able to request the capture and removal of Mexican wolves at any time, take in response to impacts to wild ungulates is not applicable on tribal trust lands.

(vii) *Take by Service personnel or a designated agency.* The Service or a designated agency may take any Mexican wolf in the nonessential experimental population in a manner consistent with a Service-approved management plan, special management measure, biological opinion pursuant to section 7(a)(2) of the Act, conference opinion pursuant to section 7(a)(4) of the Act, section 6 of the Act as authorized pursuant to § 17.31 for State wildlife agencies with authority to manage Mexican wolves, or a valid permit issued by the Service under § 17.32.

(A) The Service or designated agency may use leg-hold traps and any other effective device or method for capturing or killing Mexican wolves to carry out any measure that is a part of a Service-approved management plan regardless of State law. The disposition of all Mexican wolves (live or dead) or their parts taken as part of a Service-approved management activity must follow provisions in Service-approved management plans or interagency agreements or procedures approved by the Service on a case-by-case basis.

(B) The Service or designated agency may capture; kill; subject to genetic testing; place in captivity; or euthanize any feral wolf-like animal or feral wolf hybrid found within the MWEPA that shows physical or behavioral evidence of: Hybridization with other canids, such as domestic dogs or coyotes; being a wolf-like animal raised in captivity, other than as part of a Service-approved wolf recovery program; or being socialized or habituated to humans. If determined to be a pure Mexican wolf, the wolf may be returned to the wild.

(C) The Service or designated agency may carry out intentional or opportunistic harassment, nonlethal control measures, translocation, placement in captivity, or lethal control of problem wolves. To determine the presence of problem wolves, the Service will consider all of the following:

(*1*) Evidence of wounded domestic animal(s) or remains of domestic animal(s) that show that the injury or death was caused by Mexican wolves, or evidence that Mexican wolves were in the act of biting, killing, or wounding a domestic animal;

(*2*) The likelihood that additional Mexican wolf-caused depredations or attacks of domestic animals may occur if no harassment, nonlethal control, translocation, placement in captivity, or lethal control is taken; and

(*3*) Evidence of attractants or intentional feeding (baiting) of Mexican wolves.

(D) The Wildlife Services will discontinue use of M–44's and choking-type snares in occupied Mexican wolf range. Wildlife Services may restrict or modify other predator control activities pursuant to a Service-approved management agreement or a conference opinion between Wildlife Services and the Service.

(viii) *Unintentional take:* (A) Take of a Mexican wolf by any person is allowed if the take is unintentional and occurs while engaging in an otherwise lawful activity. Such take must be reported as specified in accordance with paragraph (k)(6) of this section. Hunters and other shooters have the responsibility to identify their quarry or target before shooting, thus shooting a wolf as a result of mistaking it for another species will not be considered unintentional take. Take by poisoning will not be considered unintentional take.

(B) Federal, State, or tribal agency employees or their contractors may take a Mexican wolf or wolf-like animal if the take is unintentional and occurs while engaging in the course of their official duties. This includes, but is not limited to, military training and testing and Department of Homeland Security border security activities. Take of Mexican wolves by Federal, State, or tribal agencies must be reported as specified in accordance with paragraph (k)(6) of this section.

(C) Take of Mexican wolves by Wildlife Services employees while conducting official duties associated with predator damage management activities for species other than Mexican wolves may be considered unintentional if it is coincidental to a legal activity and the Wildlife Services employees have adhered to all applicable Wildlife Services' policies, Mexican wolf standard operating procedures, and reasonable and prudent measures or recommendations contained in Wildlife Service's biological and conference opinions.

(ix) *Take for research purposes.* The Service may issue permits under § 17.32, and designated agencies may issue permits under State and Federal laws and regulations, for individuals to take Mexican wolves pursuant to scientific study proposals approved by the agency or agencies with jurisdiction for Mexican wolves and for the area in which the study will occur. Such take may include Mexican wolves, their prey, their competitors, or their occupied or potentially occupied habitats that might lead to management recommendations for, and thus enhance the survival of, the Mexican wolf.

(8) *Disturbance-causing land-use activities:* For any activity on Federal lands that the Service determines could adversely affect reproductive success, natural behavior, or persistence of Mexican wolves, the Service will work with Federal agencies to use their authorities to temporarily restrict human access and disturbance-causing land-use activities within a 1-mi (1.6-km) radius around release pens when Mexican wolves are in them, around active dens between March 1 and June 30, and around active Mexican wolf rendezvous sites between June 1 and September 30, as necessary.

(9) *Management:* (i) On private land within Zones 1 and 2 of the MWEPA, the Service or designated agency may develop and implement management actions to benefit Mexican wolf recovery in cooperation with willing private landowners, including: Occupancy by natural dispersal; initial release; and translocation of Mexican wolves in Zones 1 or 2 if requested by the landowner and with the concurrence of the State wildlife agency.

(ii) On tribal trust land within Zones 1 and 2 the MWEPA, the Service or a designated agency may develop and implement management actions in cooperation with willing tribal governments, including: Occupancy by natural dispersal; initial release; translocation of Mexican wolves; and capture and removal of Mexican wolves if requested by the tribal government.

(10) *Evaluation:* The Service will evaluate Mexican wolf reestablishment progress and prepare periodic progress reports and detailed annual reports. In addition, the Service will prepare a one-time overall evaluation of the nonessential experimental population program approximately 5 years after [EFFECTIVE DATE OF THE FINAL RULE] that focuses on modifications needed to improve the efficacy of this

rule, reestablishment of Mexican wolves to the wild, and the contribution the nonessential experimental population is making to the recovery of the Mexican wolf.

* * * * *

Dated: July 1, 2014.

Michael J. Bean,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2014–17587 Filed 7–24–14; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 140131088–4088–01]

RIN 0648–BD94

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fishing Effort Limits in Purse Seine Fisheries for 2014

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) to revise the 2014 limit on fishing effort by U.S. purse seine vessels in the U.S. exclusive economic zone (U.S. EEZ) and on the high seas between the latitudes of 20° N. and 20° S. in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention). The total limit for 2014 would be revised from 2,588 fishing days to 1,828 fishing days. This action is necessary for the United States to implement provisions of a conservation and management measure (CMM) adopted by the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC) and to satisfy the obligations of the United States under the Convention, to which it is a Contracting Party.

DATES: Comments must be submitted in writing by August 25, 2014.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2014–0081, and the regulatory impact review (RIR) prepared for this proposed rule, by either 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–2014–0081*, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, might 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 and address), 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.

An initial regulatory flexibility analysis (IRFA) prepared under authority of the Regulatory Flexibility Act is included in the Classification section of the **SUPPLEMENTARY INFORMATION** section of this proposed rule.

Copies of the RIR and the Supplemental Information Report prepared for National Environmental Policy Act (NEPA) purposes are available at *www.regulations.gov* or may be obtained from Michael D. Tosatto, Regional Administrator, NMFS PIRO (see address above).

FOR FURTHER INFORMATION CONTACT: Tom Graham, NMFS PIRO, 808–725–5032.

SUPPLEMENTARY INFORMATION:

Background on the Convention

A map showing the boundaries of the area of application of the Convention (Convention Area), which comprises the majority of the western and central Pacific Ocean (WCPO), can be found on the WCPFC Web site at: *www.wcpfc.int/doc/convention-area-map*. The Convention focuses on the conservation and management of highly migratory species (HMS) and the management of fisheries for HMS. The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of HMS in the WCPO. To accomplish this objective, the Convention established the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). The WCPFC includes Members, Cooperating Non-members, and Participating Territories (hereafter, collectively ''members''). The United States is a Member. American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI) are Participating Territories.

As a Contracting Party to the Convention and a Member of the WCPFC, the United States is obligated to implement the decisions of the WCPFC. The WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*) authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the WCPFC. The WCPFC Implementation Act further provides that the Secretary of Commerce shall ensure consistency, to the extent practicable, of fishery management programs administered under the WCPFC Implementation Act and the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*), as well as other specific laws (see 16 U.S.C. 6905(b)). The Secretary of Commerce has delegated the authority to promulgate regulations under the WCPFC Implementation Act to NMFS.

WCPFC Decision on Tropical Tunas

At its Tenth Regular Session, in December 2013, the WCPFC adopted CMM 2013–01, ''Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean.'' CMM 2013–01 is the most recent in a series of CMMs for the management of tropical tuna stocks under the purview of the WCPFC. It is a successor to CMM 2012–01, adopted in December 2012. These and other CMMs are available at: *www.wcpfc.int/conservation-and-management-measures*.

CMM 2013–01's stated general objective is to ensure that the stocks of bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), and skipjack tuna (*Katsuwonus pelamis*) in the WCPO are, at a minimum,

maintained at levels capable of producing their maximum sustainable yield as qualified by relevant environmental and economic factors. The CMM includes specific objectives for each of the three stocks: For each, the fishing mortality rate is to be reduced to or maintained at levels no greater than the fishing mortality rate associated with maximum sustainable yield.

CMM 2013–01 went into effect February 4, 2014, and is generally applicable for the 2014–2017 period. Some of its provisions apply to specific periods within the 2014–2017 period, and some of its provisions are contingent on whether the WCPFC makes certain decisions in the future. The CMM includes provisions for purse seine vessels, longline vessels, and other types of vessels that fish for HMS. The CMM's provisions for purse seine vessels include limits on the allowable number of fishing vessels, limits on the allowable level of fishing effort, restrictions on the use of fish aggregating devices, requirements to retain all bigeye tuna, yellowfin tuna, and skipjack tuna except in specific circumstances, and requirements to carry vessel observers. This proposed rule is limited to implementing CMM 2013–01's provisions on allowable levels of fishing effort by purse seine vessels on the high seas and in the U.S. EEZ in the Convention Area, and only for 2014. The CMM's other provisions would be implemented through one or more separate rules, as appropriate.

Existing Purse Seine Fishing Effort Limit for 2014

Currently there is a limit on the amount of fishing effort that U.S. purse seine vessels may collectively spend between the latitudes of 20° N. and 20° S. on the high seas and in the U.S. EEZ in the Convention Area in 2014 (50 CFR 300.223(a)). The areas of high seas and U.S. EEZ between the latitudes of 20° N. and 20° S. in the Convention Area are referred to in the regulations as the Effort Limit Area for Purse Seine, or ELAPS, and the limit applies within the ELAPS as a whole. The limit in the ELAPS for 2014 is 2,588 fishing days, which is identical to the limit for 2013. The 2013 and 2014 limits were established in a final rule published May 23, 2013 (78 FR 30773; ''2013 rule''), and are consistent with the CMM for tropical tunas that was in effect at that time, CMM 2012–01. CMM 2012–01 has a provision that was applicable to the high seas portion of the ELAPS and a separate provision that was applicable to the U.S. EEZ portion of the ELAPS. For reasons explained in the preamble to the proposed rule (78 FR 14755, published March 7, 2013) that preceded the May 23, 2013, final rule, NMFS established the 2013 and 2014 fishing effort limits (following the practice in previous rules for earlier years) so that a single limit applies in the entire ELAPS rather than separate limits for the two areas. Limits on U.S. purse seine fishing effort in the ELAPS have been in place since 2009, when NMFS issued a final rule (74 FR 38544, published August 4, 2009; ''2009 rule'') to establish the limits required under the then-in-effect CMM for tropical tunas, CMM 2008–01.

NMFS stated in the preamble to the March 7, 2013, proposed rule that if the WCPFC adopted a new CMM with purse seine provisions that differ from those in CMM 2012–01, NMFS would take any steps necessary to implement the WCPFC's new decision. Because the allowable level of purse seine fishing effort on the high seas has changed under CMM 2013–01, this proposed rule would make the necessary changes to the 2014 purse seine fishing effort limit in the ELAPS.

Proposed Action

This proposed rule is limited to implementing the provisions in CMM 2013–01 for 2014 on allowable levels of fishing effort by purse seine vessels on the high seas and in the U.S. EEZ. The CMM's fishing effort limit provisions for subsequent years would be implemented through one or more separate rules. NMFS is implementing the 2014 purse seine effort limits separately from other provisions of the CMM to ensure that the limits go into effect in U.S. regulations before the prescribed limits are exceeded by the fleet, which has a moderate likelihood of occurring before the end of 2014.

The purse seine fishing effort provisions of CMM 2013–01 apply only in the Convention Area between the latitudes of 20° N. and 20° S. The proposed action as described below would therefore be limited to that area.

With respect to the U.S. EEZ, CMM 2013–01 requires coastal members like the United States to ''establish effort limits, or equivalent catch limits for purse seine fisheries within their EEZs that reflect the geographical distributions of skipjack, yellowfin, and bigeye tunas, and are consistent with the objectives for those species.'' CMM 2013 further requires, ''Those coastal States that have already notified limits to the Commission shall restrict purse seine effort and/or catch within their EEZs in accordance with those limits.'' The United States has regularly notified the WCPFC of its purse seine effort limits for the U.S. EEZ since the limits were first established in 2009 (in a final rule published August 4, 2009; 74 FR 38544). Accordingly, CMM 2013–01 does not change the applicable limit for the U.S. EEZ.

With respect to the high seas, CMM 2013–01 requires flag members to restrict the fishing effort of their purse seine vessels to specified levels, which for the United States is 1,270 fishing days per year.

This proposed rule would continue to implement the applicable limits for the U.S. EEZ and the high seas such that they apply to a single area, without regard to the boundary between the U.S. EEZ and the high seas; that is, to the ELAPS as a whole. As in the previous rules that established purse seine fishing effort limits in the ELAPS, NMFS has determined that combining the high seas and the U.S. EEZ limits would accomplish the objective of controlling the fishing mortality rates of the tuna stocks as required under the CMM, and, moreover, would provide greater operational flexibility to affected purse seine vessels and result in lesser adverse economic impacts than if separate limits were established in the two areas.

The existing purse seine fishing effort limit for the ELAPS was determined as follows: The U.S. EEZ portion of the ELAPS limit was 558 fishing days per year, and the high seas limit was 2,030 days per year, resulting in a combined limit of 2,588 fishing days per year, which is currently in place for 2014. CMM 2013–01 changes the high seas portion to 1,270 fishing days per year, so the new combined limit is 1,828 days per year (558 + 1,270). Accordingly, this proposed rule would change the existing 2014 purse seine fishing effort limit for the ELAPS from 2,588 fishing days to 1,828 fishing days.

Classification

The Administrator, Pacific Islands Region, NMFS, has determined that this proposed rule is consistent with the WCPFC Implementation Act and other applicable laws, subject to further consideration after public comment.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of

the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** section of the preamble and in other sections of this **SUPPLEMENTARY INFORMATION** section of the preamble. The analysis follows:

Estimated Number of Small Entities Affected

The proposed rule would apply to owners and operators of U.S. purse seine vessels used for fishing in the Convention Area. The number of affected vessels is the number licensed under the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America (South Pacific Tuna Treaty, or SPTT). The current number of licensed vessels is 40, which is the maximum number of licenses available under the SPTT (excluding joint-venture licenses, of which there are five available under the SPTT, none of which have ever been applied for or issued).

On June 12, 2014, the Small Business Administration (SBA) issued an interim final rule revising the small business size standards, effective July 14, 2014 (79 FR 33647). The rule increased the size standard for Finfish Fishing to $20.5 million. Based on (limited) available financial information about the affected fishing fleets and the SBA's definition of a small finfish harvester (i.e., gross annual receipts of less than $20.5 million, independently owned and operated, and not dominant in its field of operation), and using individual vessels as proxies for individual businesses, NMFS believes that all the affected fish harvesting businesses are small entities. As indicated above, there are currently 40 purse seine vessels in the affected purse seine fishery. Neither gross receipts nor ex-vessel price information specific to the 40 vessels are available to NMFS, so average annual receipts for each of the 40 vessels during the last 3 years for which reasonably complete data are available, 2010–2012, were estimated as follows: The vessel's reported retained catches of each of skipjack tuna, yellowfin tuna, and bigeye tuna in each year was multiplied by an indicative Asia-Pacific regional cannery price for that species and year (developed by the Pacific Islands Forum Fisheries Agency and available at *https://www.ffa.int/node/425#attachments*). The products were summed across species for each year, and the sums were averaged across the 3 years. The estimated average annual receipts for each of the 40 vessels were less than $20.5 million.

Recordkeeping, Reporting, and Other Compliance Requirements

The proposed rule would not establish any new reporting or recordkeeping requirements (within the meaning of the Paperwork Reduction Act). Affected vessel owners and operators would have to comply with all the proposed requirements, as described earlier in the **SUPPLEMENTARY INFORMATION** section of the preamble. Fulfillment of these requirements is not expected to require any professional skills that the affected vessel owners and operators do not already possess. The costs of complying with the proposed requirements are described below to the extent possible:

If and when the purse seine fishery is closed to fishing in the ELAPS as a result of the annual fishing effort limit being reached in 2014, owners and operators of U.S. purse seine vessels would have to cease fishing in that area for the remainder of the calendar year. Closure of the fishery in the ELAPS could thereby cause foregone fishing opportunities and associated economic losses if the ELAPS contains preferred fishing grounds during such a closure. The likelihood of the fishery being closed in the ELAPS in 2014 under the proposed rule is greater than under the no-action alternative, because the proposed limit (1,828 days) is smaller than the existing limit (2,588 fishing days). Historical fishing patterns suggest a moderate likelihood of the fishery being closed before the end of 2014. The most recent 10 years for which estimates are available, but omitting 2010–2012, during which two important areas of high seas were closed to fishing, are used to determine the likelihood of the limit being reached. In order to make the data comparable among years, historical fishing effort, as well as the proposed ELAPS limit, are expressed here in terms of fishing days per year per active vessel, on average. Assuming 40 active vessels in 2014, the existing limit, 2,588 fishing days per year, is equivalent to 65 fishing days per year per vessel, on average (this level is termed the ''existing threshold'' in the following discussion, to distinguish it from the fleet-wide limit for 2014). The proposed limit, 1,828 fishing days, is equivalent to 46 fishing days per vessel per year, on average (''proposed threshold''). Among the 10 years 2001–2009 and 2013, fishing effort in the ELAPS ranged from 31 to 64 fishing days per vessel per year, exceeding the existing threshold in none of the 10 years and exceeding the proposed threshold in 4 of the 10 years, or 40 percent of the time. Based on this history, the likelihood of the proposed limit being reached in 2014 is substantial—roughly 40 percent, whereas the existing limit is unlikely to be reached.

Other factors that could influence the likelihood of the proposed limit being reached are the status of vessels with respect to whether they have fishery endorsements and are allowed to fish in the U.S. EEZ, El Niño-Southern Oscillation (ENSO) conditions, and recent changes to SPTT-related arrangements. Regarding the first factor, if the proportion of the fleet that has fishery endorsements changes from the proportion during the baseline period, the likelihood of the ELAPS limit being reached would change accordingly (if the proportion increases, the likelihood would increase). However, because fishing in the U.S. EEZ makes up a relatively small portion of all fishing in the ELAPS, this is a relatively minor factor, and is not examined any further here. Regarding the second factor, the eastern areas of the WCPO have tended to be comparatively more attractive to the U.S. purse seine fleet during El Niño events (versus other times), when warm surface water spreads from the western Pacific to the eastern Pacific and large, valuable yellowfin tuna become more vulnerable to purse seine fishing. Consequently, the ELAPS, much of which is situated in the eastern range of the fleet's fishing grounds, is likely to be more important fishing grounds to the fleet during El Niño events (as compared to neutral or La Niña events). According to the National Weather Service (see *http://www.cpc.ncep.noaa.gov/products/analysis_monitoring/enso_advisory/index.shtml*), as of May 2014, conditions were ENSO-neutral and the forecast was that the chance of El Niño conditions will exceed 65 percent by the summer of 2014. To put this into perspective, the operational definition of El Niño as used by the National Weather Service is one such that El Niño events—which by definition last no fewer than five months and typically last less than 2 years—have occurred four times since 2001, and seven times since 1988. During this period, El Niño conditions have prevailed during much less than half the time. Thus the more-than-65 percent chance of an El Niño developing in the summer of 2014 suggests a slightly higher likelihood (than indicated by historical fishing effort alone) of the proposed 2014 ELAPS limit being reached. Regarding the third factor, effective June 15, 2013, while certain SPTT instruments are being renegotiated, there is an interim

arrangement in place between U.S. purse seine vessel owners and the members of the Pacific Islands Forum Fisheries Agency (FFA) that stipulates that the U.S. fleet may collectively spend no more than 12,000 fishing days in the EEZs of the Parties to the Nauru Agreement (PNA, a subset of eight FFA members in whose waters most WCPO tropical purse seine fishing occurs), and no more than 450 fishing days in the EEZs of the other FFA members during the period of the interim arrangement, which is 18.5 months). Assessing the likelihood of the FFA members' EEZs ''limit'' (in quotation marks because it is not a federal regulatory limit) being reached before the end of 2014 is difficult because the meaning of a fishing day under that arrangement is different than the meaning as used for the ELAPS limit, and NMFS does not have access to reliable measures of fishing days as used in the arrangement. The following discussion is based on fishing days as defined for the purpose of the ELAPS limit. The ''limit'' of 12,000 + 450 fishing days over 18.5 months means that there are 202 fishing days in the FFA members' EEZs available to each of the 40 expected U.S. vessels per 12 months, on average. Over the life of the SPTT through 2013, this level of 202 fishing days per vessel in the FFA members' EEZs was exceeded in only one calendar year, 2010, which saw 208 fishing days per vessel in the EEZs of the FFA members. The second highest level was in 2011, when there were 194 fishing days per vessel. 2010 and 2011 were two of the three years during which the two westernmost high seas pockets were closed to purse seine fishing, so they are probably not very indicative of likely fishing effort in 2014. Thus, it appears that there is a relatively small likelihood of the EEZs of the FFA members becoming unavailable to the U.S. fleet before the end of 2014. Furthermore, it is possible that U.S. vessels will obtain access to additional 2014 fishing days in the EEZs of one or more FFA members, which would further lessen the likelihood of the FFA members' EEZs ''limit'' being reached.

In summary, based on the available information, there is a moderate likelihood of the proposed ELAPS limit being reached before the end of 2014 (about 40-percent likelihood based solely on historical patterns, and slightly greater taking into account forecasted ENSO conditions).

The costs associated with a closure of the ELAPS would depend greatly on the length of the closure. Given the moderate likelihood of a closure, its duration would likely be relatively brief. The costs of a closure would also depend greatly on whether the EEZs of other nations, particularly the typically most favored fishing grounds, the EEZs of the PNA, are still open to fishing. As indicated above, there is relatively small likelihood of the EEZs of the FFA members being unavailable for fishing before the end of 2014. Assuming they do remain available as fishing grounds, the impacts of a closure of the ELAPS would likely be minor. Nonetheless, the closure of any fishing grounds for any amount of time would be expected to bring impacts to affected entities (e.g., because the open area might, during the closed period, be less optimal than the closed area, and vessels might use more fuel and spend more time having to travel to open areas). If the ELAPS is a relatively preferred fishing ground during the closure (e.g., because of oceanic conditions or other factors), then the losses would be accordingly greater than if the ELAPS is not preferred relative to other fishing grounds. If the EEZs of the PNA and other FFA members are not available during an ELAPS closure, the costs of an ELAPS closure could be substantial. In the event the entire WCPO is closed to fishing during an ELAPS closure, possible next-best opportunities include fishing outside the Convention Area in the eastern Pacific Ocean (EPO), and not fishing. The EPO tends to be fished very little by the fleet, indicating it contains less favorable fishing grounds (although, as indicated above, it tends to become more favorable during El Niño events). Furthermore, unless on the IATTC Vessel Register, which very few of the SPTT-licensed purse seine vessels currently are, an SPTT-licensed vessel is allowed to make only one fishing trip in the EPO each year, not to exceed 90 days in length, and there is an annual limit of 32 trips for the entire SPTT-licensed fleet (50 CFR 300.22(b)(1)). The alternative of not fishing at all during an ELAPS closure would mean a loss of any revenues from fishing. However, many of the vessels' variable operating costs would be avoided in that case, and for some vessels the time might be used for productive activities like vessel and equipment maintenance. U.S. purse seine vessel operating costs are not known, so estimates of economic losses cannot be made. But information on revenues per day can give an indication of the magnitude of possible economic costs to affected entities. Average annual gross revenues for the 40 affected purse seine vessels during 2010–2012 were approximately $11 million per vessel, on average. This equates to about $30,000 per calendar day, on average.

The proposed 2014 ELAPS limit could affect the temporal distribution of fishing effort in the U.S. purse seine fishery. Since the limits would apply fleet-wide; that is, they would not be allocated to individual vessels, vessel operators might have an incentive to fish harder in the ELAPS earlier in a given year than they otherwise would. Such a ''race-to-fish'' effect might also be expected in the time period between when a closure of the fishery is announced and when it is actually closed, which would be at least seven calendar days. To the extent such temporal shifts occur, they could affect the seasonal timing of fish catches and deliveries to canneries, and conceivably affect prices. However, because most of the traditional fishing grounds are outside the ELAPS, the intensity of any race-to-fish in the ELAPS is likely to be low if it occurs at all. The small likelihood of the EEZs of the FFA being closed to fishing before the end of 2014, as discussed above, might also influence the behavior of fishermen earlier in the year, but it is not clear how it would influence fishing in the ELAPS. If fishermen are more concerned about the FFA members' EEZs closing at some point, they might fish harder in those waters earlier in the year; if, on the other hand, they are more concerned about the ELAPS closing, they might fish harder in the ELAPS earlier in the year. In any case, the timing of cannery deliveries by the U.S. fleet alone (as it might affected by a race to fish in the ELAPS) is unlikely to have an appreciable impact on prices, since many canneries buy from the fleets of multiple nations at any given time. A race to fish could bring costs to affected entities if it causes vessel operators to forego vessel maintenance in favor of fishing or to fish in weather or ocean conditions that they otherwise would not. This could bring costs in terms of the health and safety of the crew as well as the economic performance of the vessel.

In summary, there is a moderate likelihood of the limit being reached before the end of 2014, and if it is reached before the end of 2014, the impacts to affected entities could be minor or substantial, depending on such factors as the length of the closure, whether the EEZs of the FFA members remain available for fishing, and oceanic conditions.

There would be no disproportionate economic impacts between small and large entities operating vessels as a result of this proposed rule. Furthermore, there would be no

disproportionate economic impacts based on vessel size, gear, or homeport.

Duplicating, Overlapping, and Conflicting Federal Regulations

NMFS has not identified any Federal regulations that duplicate, overlap with, or conflict with the proposed regulations.

Alternatives to the Proposed Rule

In previous rulemakings to establish or revise U.S. purse seine fishing effort limits in the ELAPS in accordance with WCPFC decisions, NMFS considered a number of alternatives. The alternatives had to do, firstly, with the time scales for the limits (e.g., single-year versus multiple-year limits); secondly, with whether separate limits would be established in the U.S. EEZ and high seas portions of the ELAPS or they would be combined; thirdly, with whether the limit(s) would be allocated to individual vessels; and fourthly, with the magnitude of the limit(s).

The first category, time scales, is not relevant here because the objective is to implement the required fishing effort limit for 2014 only.

The second category, whether to break up the ELAPS limit into separate limits for the U.S. EEZ and the high seas portions of the ELAPS, would provide less operational flexibility for affected purse seine vessels, and thus be more constraining and costly than the proposed limit. It is not preferred for that reason.

The third category, allocating the limit among individual vessels, would likely alleviate any adverse impacts of a race-to-fish that might occur as a result of establishing the competitive fishing effort limits as in the proposed rule. As described in the previous paragraphs, those potential impacts include lower prices for landed product and risks to performance and safety stemming from fishing during sub-optimal times. Those impacts, however, are expected to be minor, so this alternative is not preferred.

Regarding the fourth category, the magnitude of the limits, NMFS could, as it did for the 2013 rule that established the 2013 and existing 2014 ELAPS limit, consider both smaller and larger limits for the ELAPS. Smaller limits, being more constraining and costly to affected fishing businesses, are not considered further here. CMM 2013–01 includes an explicit limit for the United States for the high seas, 1,270 fishing days per year, so NMFS is not afforded any discretion there. Like its predecessor, CMM 2012–01, CMM 2013–01 is less explicit with respect to the U.S. EEZ, so NMFS could consider a more expansive limit for that aspect of the total ELAPS limit. For example, in the 2013 rule, NMFS considered an alternative that would be based in part on the fleet's greatest annual level of fishing effort in the U.S. EEZ (on an average per-vessel basis, then expanded to a 40-vessel-equivalent) during the 1997–2010 time period. Using that approach here, the U.S. EEZ aspect of the limit would be 1,655 fishing days, and when combined with the high seas aspect of 1,270 fishing days, the total ELAPS limit would be 2,925 fishing days. Because this alternative limit is greater and thus less constraining than the proposed limit of 1,828 fishing days (as well as the existing limit of 2,588 fishing days), the costs of complying with this alternative would be less than or equal to those of the proposed limit. This alternative is not preferred because it would depart from the effort limits established for the period 2009–2013. The approach used in formulating the limit proposed in this rule is consistent with the precedent set by the 2009 rule and the 2013 rule, and affected entities have been exposed to the impacts of those limits for the past five years.

The alternative of taking no action at all, which would leave the existing 2014 ELAPS limit of 2,588 fishing days in place, is not preferred because it would fail to accomplish the objective of the WCPFC Implementation Act or satisfy the international obligations of the United States as a Contracting Party to the Convention.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: July 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 300 is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 1. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

Authority: 16 U.S.C. 6901 *et seq.*

■ 2. In § 300.223, paragraph (a)(1) is revised to read as follows:

§ 300.223 Purse seine fishing restrictions.

* * * * *

(a) * * *

(1) For calendar year 2014 there is a limit of 1,828 fishing days.

* * * * *

[FR Doc. 2014–17538 Filed 7–24–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–BD74

Fisheries of the Exclusive Economic Zone Off Alaska; Fishery Management Plan for Groundfish of the Gulf of Alaska

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

ACTION: Notice of availability of a proposed fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the North Pacific Fishery Management Council (Council) has submitted Amendment 96 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) for review by the Secretary of Commerce (Secretary). Amendment 96 would revise the sablefish individual fishing quota program (IFQ Program) to allow Gulf of Alaska Community Quota Entities (CQEs) to transfer and hold small blocks of sablefish quota share (QS). Amendment 96 would allow CQEs to acquire additional QS and facilitate sustained participation by CQE community residents in the IFQ Program. This action is necessary to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the GOA FMP, and other applicable laws.

DATES: Comments on Amendment 96 must be received by September 23, 2014.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2013–0161, 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-2013-0161,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to Glenn Merrill, Assistant Regional

Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. P.O. Box 21668, Juneau, AK 99802–1668.

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), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the Regulatory Impact Review (RIR) and the Initial Regulatory Flexibility Analysis (IRFA) for Amendment 96 are available from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Peggy Murphy, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each regional fishery management council submit any FMP or FMP amendment it prepares to the Secretary for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** that the amendment is available for public review and comment. This notice announces that proposed Amendment 96 to the GOA FMP is available for public review and comment.

Amendment 96 to the GOA FMP would revise the IFQ Program for sablefish fisheries in the Gulf of Alaska. The IFQ Program for the fixed-gear commercial fisheries for halibut and sablefish in waters in and off Alaska is a limited access privilege program implemented in 1995 (58 FR 59375, November 9, 1993). The IFQ Program limits access to the halibut and sablefish fisheries to those persons holding QS in specific management areas. The amount of halibut and sablefish that each QS holder may harvest is calculated annually and issued as IFQ in pounds.

In 2002, the Council recommended revisions to IFQ Program regulations and policy to allow a non-profit entity to hold QS on behalf of residents of specific rural communities located adjacent to the coast of the GOA. In 2004, NMFS implemented the Council's recommendations as Amendment 66 to the GOA FMP (69 FR 23681, April 30, 2004). Amendment 66 implemented the community quota entity program (CQE Program) to allow these communities to form non-profit corporations called CQEs to transfer and hold catcher vessel QS under the IFQ Program. GOA CQEs that transfer and hold QS on behalf of an eligible community may lease the resulting annual IFQ to fishermen who are residents of the community. The GOA CQE Program was developed to allow a distinct set of small, remote, coastal communities in Southeast and Southcentral Alaska to transfer and hold halibut and sablefish QS for use by community residents in order to help minimize adverse economic impacts of the IFQ Program on such communities and provide for the sustained participation of the communities in the IFQ fisheries.

Amendment 96 is specific to the GOA CQE Program and does not affect the Aleutian Islands CQE Program. Where the terms ''CQE'' or ''CQE Program'' are used in this notice, they are specifically referring to the regulations and management measures applicable to the GOA CQE Program, and not to the Aleutian Islands CQE Program.

The CQE Program includes a number of management provisions that originated from the IFQ Program structure and affect the use of CQE-held QS and the annual IFQ derived from the QS. The provisions relevant to Amendment 96 include management area and vessel size category designations for QS; QS use caps; and QS blocks. Under some of these provisions, a CQE has the same privileges and is held to the same limitations as individual QS holders in the IFQ fishery. For example, CQE-held QS is subject to the same IFQ regulatory area use cap that applies to non-CQE held QS. In other instances, the CQE is subject to less restrictive provisions than individual, non-CQE QS holders. For example, a community resident leasing IFQ from a CQE may fish the IFQ derived from QS assigned to a larger vessel size category on a smaller size category of catcher vessel. In other instances, the CQE must operate under more restrictive provisions than individual, non-CQE QS holders, in part to protect existing QS holders and preserve ''entry-level'' opportunities for new entrants.

Amendment 96 would amend the GOA FMP to remove the restriction on CQEs transferring and holding sablefish QS blocks that are less than a minimum size. The IFQ Program initially issued QS in blocks. A block is a consolidation of QS units that cannot be subdivided upon transfer. The CQE Program prohibits CQEs from holding ''small blocks'' of QS in GOA IFQ regulatory areas. The amount of QS units that comprise a small block in each IFQ regulatory area in the GOA is specified for the sablefish fishery in regulations at 50 CFR 679.41.

A primary purpose of QS blocks was to conserve small blocks of QS that could be transferred at a relatively low cost by crew members and new entrants to the IFQ fisheries. Smaller blocks of QS are typically designated for vessels of a smaller size category: category C in the sablefish fishery. New entrants tend to own or hold smaller category C vessels. Because blocks were structured to be limited in size, blocked QS typically is less expensive and more affordable for new entrants. The IFQ Program also limits the number of blocks individual QS holders and CQEs may transfer and hold in order to prevent unrestricted transferring of the type of QS that is most useful and affordable for new entrants to purchase.

When the CQE Program was developed, the Council and NMFS were concerned that CQEs would try to acquire as much of the most affordable QS as they were allowed to hold and that gains in CQE holdings could reflect losses of QS holdings among residents of the same CQE communities. The Council and NMFS were also concerned that CQEs might have greater access to capital than would individuals, so they could buy up blocks of QS that are most in demand by non-CQE fishermen with small operations. The Council and NMFS determined it was appropriate to restrict CQEs from transferring or holding small blocks of QS to preserve fishing opportunities for new entrants in certain IFQ regulatory areas.

CQEs participating in the CQE Program have made little progress towards reaching the regulatory limits on the maximum amount of QS that may be transferred or IFQ that may be harvested. Since implementation of the CQE program in 2004, only two of the 45 communities eligible for the CQE program have formed CQEs, transferred QS, and harvested the resulting IFQ. These two CQEs do not hold sablefish QS. Based on a review of the CQE Program in 2010, the Council determined that lack of participation in the CQE Program can be attributed to limited availability of QS for transfer, increased market prices for halibut and sablefish QS, and limited viable options for financing QS transfer. However, the Council also noted that the current

prohibition on CQEs' transferring and holding blocks of QS of less than a minimum size may contribute to their low participation in the CQE Program. Given these factors, the Council and NMFS determined it was appropriate to relieve the prohibitions on CQEs' transferring or holding small blocks of QS.

The Council adopted Amendment 96 on April 6, 2013. Amendment 96 would remove the restriction on CQEs' transferring and holding small blocks of QS and allow all CQEs to transfer any size block of sablefish QS to hold for use by eligible community members. The objectives of Amendment 96 are to provide CQE communities in the GOA with increased opportunity to transfer and hold QS, and sustain participation of CQE community residents in the IFQ fisheries.

In proposing Amendment 96, the Council and NMFS considered the current participation of CQE and non-CQE QS holders in the IFQ fishery, and the potential changes in access to QS, effects on the QS market, and social and economic tradeoffs. Given the reasons for low participation in the CQE Program described above, the Council and NMFS determined it is unlikely that CQEs would transfer the maximum amount of QS made available by Amendment 96. Thus, small block halibut QS would continue to be available to non-CQE participants in the IFQ sablefish fishery. The Council and NMFS determined that removing the small block restriction from the CQE Program could improve the ability of CQEs to obtain the most affordable blocks of QS without negatively impacting the ability of non-CQE fishery participants to obtain the similar size blocks of QS.

An RIR/IRFA was prepared for Amendment 96 that describes the CQE Program, the purpose and need for this action, the management alternatives evaluated to address this action, the economic and socioeconomic effects of the alternatives, and the potential adverse economic impacts on small entities directly regulated by the proposed rule (see **ADDRESSES**).

Amendment 96 and its proposed implementing regulations are designed to comply with the Magnuson-Stevens Act, the national standards, and other applicable law. The proposed amendment and implementing regulations particularly address National Standard 8, which provides that conservation and management programs shall, consistent with the conservation requirements of the Act, take into account the importance of fishery resources to communities in order to provide for the sustained participation of such communities, and to the extent practicable, minimize adverse economic impacts on such communities.

The IFQ Program for Pacific halibut is implemented under the authority of the Northern Pacific Halibut Act of 1982. The Council does not have a halibut fishery management plan. The Council and Secretary, however, consider the impacts of all the IFQ management measures on fishery-dependent communities. If Amendment 96 is approved, then regulations affecting the halibut and sablefish IFQ Program would be implemented in one rule. Amendment 96 is intended to promote the goals and objectives of the Magnuson-Stevens Act, the GOA FMP, and other applicable laws.

Public comments are being solicited on proposed Amendment 96 to the GOA FMP through the end of the comment period stated in this notice of availability (see **DATES**). A proposed rule that would implement Amendment 96 will be published in the **Federal Register** for public comment, following NMFS's evaluation of the proposed rule under the Magnuson-Stevens Act. Public comments, whether specifically directed to the amendment or the proposed rule, must be received, not just postmarked or otherwise transmitted, by 5 p.m., A.l.t., on the last day of the comment period (see **DATES**). Comments received by the end of the comment period will be considered in the approval/disapproval decision on Amendment 96. Comments received after that date will not be considered in the decision to approve or disapprove Amendment 96.

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

Dated: July 22, 2014.

Alan D. Risenhoover,

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

[FR Doc. 2014–17556 Filed 7–24–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 130705590–4600–02]

RIN 0648–BD45

Fisheries of the Northeastern United States; Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: Based on Atlantic States Marine Fisheries Commission recommendations, we publish this proposed rule to request public comment on potential changes to Federal American lobster regulations for Lobster Conservation Management Areas 2, 3, 4, and 5, including trap reductions in Areas 2 and 3, and broodstock measures is Areas 2, 3, 4, and 5. The proposed measures aim to reduce fishing exploitation and reduce latent effort in the trap fishery to scale the fishery to the size of the Southern New England lobster stock. This action is necessary to ensure fishery regulations for the lobster fishery in Federal waters remain consistent with the intent of the Atlantic Coastal Fisheries Cooperative Management Act.

DATES: Comments must be received on or before August 25, 2014.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2013–0110, 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-2013-0110,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to John K. Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on American Lobster Proposed Rule.''

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record

and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Allison Murphy, Sector Policy Analyst, (978) 281–9122.

SUPPLEMENTARY INFORMATION:

Statutory Authority

The proposed regulations would modify Federal lobster fishery management measures in the Exclusive Economic Zone (EEZ) under the authority of section 803(b) of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act) (16 U.S.C. 5101 *et seq.*), which states, in the absence of an approved and implemented Fishery Management Plan under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and, after consultation with the appropriate fishery management council(s), the Secretary of Commerce may implement regulations to govern fishing in the EEZ, from 3 to 200 nautical miles (nm) offshore. The regulations must be: (1) Compatible with the effective implementation of an Interstate Fishery Management Plan (ISFMP) developed by the Atlantic States Marine Fisheries Commission; and (2) consistent with the National Standards set forth in section 301 of the Magnuson-Stevens Act.

Purpose and Need for Management

The purpose of the proposed action is to manage the American lobster fishery in a manner that maximizes resource sustainability, recognizing that Federal management occurs in consort with state management, and thus, that compatibility between state and Federal measures is crucial to the overall success of American lobster management. To achieve this purpose, we are responding to recently-approved state management measures to address poor stock conditions and persistent recruitment failure of the Southern New England (SNE) American lobster stock.

Background

The American lobster fishery is managed by the Commission under Amendment 3 to the ISFMP for American Lobster. Since 1997, the Commission has coordinated the efforts of the states and Federal Government toward sustainable management of the American lobster fishery. We manage the portion of the fishery conducted in Federal waters from 3 to 200 miles offshore, based on management recommendations made by the Commission.

The American lobster management unit is divided between three lobster stocks and seven Lobster Conservation Management Areas. Recent data indicate that the SNE American lobster stock, which includes all or part of six Areas, is at a low level of abundance and is experiencing persistent recruitment failure, caused by a combination of environmental factors and continued fishing mortality. To address the poor condition of the SNE stock, the Commission adopted Addendum XVII to Amendment 3 of the ISFMP in February of 2012. The measures in Addendum XVII are intended to reduce fishing exploitation to the SNE lobster stock by 10 percent. To further address stock rebuilding of the SNE lobster stock, Addendum XVIII was adopted in August 2012, to reduce latent effort in the trap fishery and scale the fishery to the diminished size of the SNE stock, through a series of annual trap reductions in Areas 2 and 3. For trap limits to be effective in reducing harvest and rebuilding the stock, latent effort must be addressed to prevent this effort from coming back into the fishery as the stock grows and catch rates increase. Copies of the Addenda are available on the Commission's Web site at: *http://www.asmfc.org.*

Proposed Measures

To achieve a 10-percent reduction in fishing exploitation of the SNE American lobster stock under Addendum XVII, the Commission recommended several effort control measures for Areas 2, 3, 4, 5, and 6 to protect broodstock and reduce the amount of American lobsters harvested from these Areas. These measures were reviewed by the Commission's scientific Technical Committee, which found that these measures would likely achieve the desired 10-percent reduction in exploitation. This rule proposes to implement the Commission's recommended measures, including: Minimum carapace length increases; mandatory v-notching of egg-bearing female lobsters; and seasonal fishery closures. Table 1 contains the specific measures adopted by the Commission and proposed for Federal implementation.

TABLE 1—ADDENDUM XVII MANAGEMENT MEASURE CHANGES

Management measures	Area 2	Area 3	Area 4	Area 5
V-Notching *	Mandatory for legal-sized egg-bearing females.	n/a	Mandatory for legal-sized egg-bearing females.	Mandatory for legal-sized egg-bearing females.
New Minimum Size	n/a	3 17/32 in (8.97 cm)	n/a	n/a.
Seasonal Closure	n/a	n/a	February 1–March 31	February 1–March 31.

* If v-notching is deemed insufficient to meet the conservation objectives, additional seasonal closures may be adopted by the Commission.

While the harvest of lobsters from Areas 4 and 5 is proposed to be prohibited from February 1 through March 31, annually, we propose to allow additional time to remove and set gear during the closures. Permit holders will have a 2-week period (i.e., through February 14) to remove all lobster traps from the water. In addition, permit holders may begin to set lobster traps 1 week prior to the end of the area closure (i.e., March 25). We are not proposing measures recommended by the Commission for Area 6 (mandatory v-notching and a seasonal closure) because Area 6 is contained entirely within state waters, and is therefore outside of Federal jurisdiction.

Under Addendum XVIII, the Commission approved trap reductions for Areas 2 and 3, following separate trap reduction schedules. Consistent with the Commission's ISFMP and in response to the Commission's recommendations for complementary management measures to address the needs of the SNE stock, we propose to reduce qualified Area 2 trap allocations for Federal lobster permit holders by 25 percent on April 30, 2015, the last day

of fishing year (FY) 2014. Area 2 allocations would then be reduced by 5 percent at the end of each subsequent FY for 5 years, as prescribed by the Commission. Similarly, we propose to reduce Area 3 trap allocations by 5 percent on April 30, 2014, the last day of FY 2014. Area 3 allocations would then be reduced by 5 percent at the end of each subsequent FY for 4 years, as prescribed by the Commission. Table 2 includes a schedule of trap reductions, and the resulting trap allocations based on an initial trap allocation of 800 traps.

TABLE 2—AREA 2 AND 3 TRAP REDUCTION SCHEDULE AND EXAMPLE ALLOCATIONS

Effective year	Area 2 reductions (percent)	Area 2 example allocation	Area 3 reductions	Area 3 example allocation
FY 2014 (present) (percent)	NA	800	NA	800
End of FY 2014 (Year 1)	25	600	5	760
End of FY 2015 (Year 2)	5	570	5	722
End of FY 2016 (Year 3)	5	542	5	686
End of FY 2017 (Year 4)	5	515	5	652
End of FY 2018 (Year 5)	5	490	5	620
End of FY 2019 (Year 6)	5	466	NA	NA

Depending on the timing of these actions and the readiness of the Commission's Trap Transfer Database, Federal permit holders could transfer traps during the 2014 fishing year, with transferable allocations accounting for the first year of the trap cuts. The resulting allocations based on the first-year reductions and any trap transfers would become effective at the start of FY 2015, or May 1, 2015.

Related Actions and Implementation Options

In addition to these upcoming measures, we recently published a final rule (79 FR 19015; April 7, 2014), based on Commission recommendations, establishing a limited access program in two lobster conservation management areas, Area 2 and the Outer Cape Area, and implementing a lobster Trap Transfer Program in Areas 2 and 3, and the Outer Cape Area. Because the Trap Transfer Program may ease economic impacts of trap reductions and provide added additional business flexibility, we propose to implement trap reductions at the same time as the Trap Transfer Program, as recommended by the Commission. Based on the analysis included in the associated draft Environmental Assessment, the order of implementation affects the resulting trap allocations. Table 3 includes an example of the resulting trap allocations for an Area 2 permit currently allocated 800 traps following the scheduled 25-percent reduction and transfer in of 200 additional traps.

TABLE 3—RESULTING YEAR 1 TRAP ALLOCATIONS BASED ON THE ORDER OF REDUCTIONS AND TRANSFERS

	Scenario 1 (preferred)	Scenario 2
Initial Allocation	800 traps	800 traps.
Step 1:	25% trap reduction	Unable to transfer in traps, already at maximum.
Resulting Allocation	600 traps	800 traps.
Step 2	Trap transfer allowed, purchased 200 traps	25% trap reduction.
Final Allocation in Year 1	800 traps	600 traps.

Note that NMFS would cut 200 traps in either scenario, but that only in Scenario 1 would fishers have the potential to immediately mitigate the trap-cut impacts using trap transfers. Under Scenario 1, where trap reductions are scheduled for all allocations just prior to trap transfers, the permit holder's potential allocation (assuming participation in the Trap Transfer Program) would result in significantly more traps than under Scenario 2, where trap transfers would not be allowed if the permit holder is at the maximum trap limit prior to trap reductions. We propose to schedule trap reductions to be effective at 11:59 p.m. on April 30, 2015, just ahead of trap transfers that have been negotiated and approved during FY 2014, but which will not become effective until 12:01 a.m. on May 1, 2015, consistent with Scenario 1. Permit holders would be able to transfer traps, based on the first round of trap cuts, during the 2014 fishing year, and the revised allocations resulting from the transfers of cut allocations would become effective at the start of the 2015 Federal fishing year on May 1, 2015. We are specifically requesting comment on this approach.

The effectiveness of the proposed trap cuts is dependent upon and impacted by the availability of the Trap Transfer Program identified in our recent final rule (79 FR 19015; April 7, 2014). Specifically, both industry and the Commission indicated that a trap transfer program was a necessary precursor to any trap cut program so that lobster fishers could replace their cut traps with transferred traps. In order to maintain lobster business viability, industry and the Commission sought to have trap cuts and trap transferability occur contemporaneously so that businesses did not have to fish at cut levels for an extended time period while waiting for trap transfers to take effect. The timing of the trap cuts and trap transfer programs, therefore, is critical.

The timing of the recently approved Trap Transfer Program has not yet been set and will be dependent upon the completion and effectiveness of the Commission's Trap Tag Database. If the Database is not completed and ready until fall 2014 (the Area 2 and Outer Cape Cod qualification and allocation program will not be completed until then and thus, we will not be able to populate the Database with final trap allocations until then), then trap transfers will not be able to be completed until sometime after that. This will compress the time schedule

within which to complete trap transfers and may impact the ability of buyers and sellers to conduct trap transfers in anticipation of the trap cuts that this rule proposes to occur at the close of the FY 2014. Given the novelty of the Trap Transfer Program, it is unclear how much time will be needed for trap sellers and buyers to meet and propose transfers, for Federal and state agencies to meet, reconcile, and approve the proposed transfers, and for permits and trap tag orders to reflect the approved transfer. Consequently, it might prove challenging for all permit holders to participate and complete their desired trap transfer transactions in this first year, which might take on added importance given the proposed trap reductions on April 30, 2015. Therefore, we request comment on the proposed April 30, 2015, trap cut date and whether alternative dates, including later dates, such as a 1-year delay, might better advance lobster management objectives.

Comments and Responses

To help determine the scope of issues to be addressed and to identify significant issues related to this action, we solicited written comments on an advanced notice of proposed rulemaking (ANPR), published on August 20, 2013 (78 FR 51131). The comment period closed on September 19, 2013. In addition to requesting comment on the Commission's measures, we requested comment on the timing of American lobster actions currently under development.

In total, four letters were submitted in response to the ANPR, three of which were applicable to these proposed measures and are responded to below. The fourth letter was not applicable to the proposed measures and is not discussed further.

Comment 1: The Atlantic Offshore Lobstermen's Association (AOLA), the Commission, and Connecticut Department of Environmental Protection (CT DEP) all commented in support of management measures being proposed.

Response: We agree that implementing mandatory v-notching, a minimum carapace size increase, and seasonal closures will help to address the low level of abundance and persistent recruitment failure of the SNE American lobster stock. In addition, trap reductions are proposed to address rebuilding of the lobster stock by scaling the fishery to size of the SNE stock. For these reasons, we are proposing the full suite of measures approved by the Commission in Addenda XVII and XVIII.

Comment 2: The AOLA expressed their support for maintaining economic flexibility, noting that trap reductions and the Trap Transfer Program should be implemented ''on an identical time schedule.''

Response: We agree that trap reductions and the Trap Transfer Program should be implemented at the same time to mitigate any potential negative effects of trap reductions, and maintain a viable fleet, but functionally, one needs to be implemented before the other, even if mere moments before the other, simply to better account for and administer trap transfers. We are proposing to implement trap reductions to all Area 2 and 3 allocations for the end of FY 2014 (April 30, 2015, at 11:59 p.m.), followed by any trap transfers, consistent with the process discussed in our recent final rule (79 FR 19015; April 7, 2014), but would like comment on the order of implementation.

Comment 3: The CT DEP recommended that the trap transfer process be conducted in a manner that allows for the fair participation of all citizens and should be done in an open forum and in conjunction with a fully functional Trap Transfer Database.

Response: As explained in our recent final rule (79 FR 19015; April 7, 2014), NMFS intends to implement an open and accessible Trap Transfer Program to all eligible lobster permit holders. The Program, however, is new and we cannot predict participant behavior and response at this point. NMFS does not want to introduce variables that would engineer market behavior in response to a problem that may not exist. NMFS intends to monitor its Trap Transfer Program and agrees with the commenter that the agency should work with the Commission to investigate ways to make available transferable trap allocations known and accessible to participants.

Classification

This proposed rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

This proposed rule does not contain policies with federalism implications as defined in E.O. 13132. The proposed measures are based upon the American Lobster ISFMP that was created by and is overseen by the states. The proposed measures are a result of Addenda XVII and XVIII, which was approved by the states, recommended by the states through the Commission for Federal adoption, and is in place at the state level. Consequently, NMFS has consulted with the states in the creation of the ISFMP, which makes recommendations for Federal action. Additionally, these proposed measures would not pre-empt state law and would do nothing to directly regulate the states.

This proposed rule does not contain a collection of information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA).

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires agencies to assess the economic impacts of their proposed regulations on small entities. The objective of the RFA is to consider the impacts of a rulemaking on small entities, and the capacity of those affected by regulations to bear the direct and indirect costs of regulation. We prepared an Initial Regulatory Flexibility Analysis (IRFA) as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. The proposed management measures would affect small entities engaged in several different aspects of the lobster fishery. The affected entities include Federal lobster permit holders fishing in SNE, specifically Areas 2, 3, 4 and 5.

Description of the Reasons Why Action By NMFS Is Being Considered

Recent data indicate that the SNE American lobster stock, which includes all or part of six Areas, is at a low level of abundance and is experiencing persistent recruitment failure, caused by a combination of environmental factors and continued fishing mortality. To address the poor condition of the SNE stock, the Commission adopted Addenda XVII and XVIII to Amendment 3 of the ISFMP, approving a combination of trap cuts and broodstock measures. The Commission Lobster Board's Plan Development Team has confirmed that the affected states have already issued regulations that are compliant with Addendum XVII measures. To the extent practicable, we aim to implement regulations consistent with Commission recommendations, and those promulgated by our partner states.

The Objectives and Legal Basis for the Proposed Action

The objective of the proposed action is to reduce fishing exploitation and reduce latent effort in the trap fishery to scale the fishery to the size of the Southern New England (SNE) lobster stock. The legal basis for the proposed action is the ISFMP for American lobster and promulgating regulations at 50 CFR part 697.

Description and Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

The RFA requires agencies to assure that decision makers consider disproportionate and/or significant adverse economic impacts of their proposed regulations on small entities. This section provides an assessment and discussion of the potential economic impacts of the proposed action, as required of the RFA.

The IRFA is designed to assess the impacts that various regulatory alternatives would have on small entities, including small businesses, and to determine ways to minimize adverse impacts. Under the RFA, an agency does not need to conduct an IRFA or Final Regulatory Flexibility Analysis (FRFA) if a certification can be made that the proposed rule, if adopted, will not have a significant adverse economic impact on a substantial number of small entities.

The purpose of the RFA is to inform the agency, as well as the public, of the expected economic impacts of the various alternatives contained in the proposed rulemaking and to ensure that the agency considers alternatives that minimize the expected impacts while meeting the goals and objectives of the regulatory documents and applicable statutes.

The recent addition of vessel owner information to the permit data allows us to better define fishing ''businesses.'' The vessel ownership data identifies all the individual people who own fishing vessels. Vessels can be grouped together according to common owners, which can then be treated as a fishing business, for purposes of RFA analyses. Revenues summed across all vessels in the group and the activities that generate those revenues form the basis for determining whether the entity is a large or small business. Ownership data are available for the potentially impacted by the proposed action from 2010 onward.

The RFA recognizes and defines three kinds of small entities: Small businesses; small organizations; and small governmental jurisdictions. The Small Business Administration (SBA) size standards define whether a business entity is small and, thus, eligible for Government programs and preferences reserved for ''small business'' concerns. Size standards have been established (and recently modified) for all for-profit economic activities or industries in the North American Industry Classification System (NAICS). Designations of large and small entities were attached based on each entity's three-year average landings. For entities landing a plurality of revenue in shellfish (NAICS 111412), the threshold for ''large'' is $5.0 million. For entities landing a plurality of revenue in finfish (NAICS 111411), the threshold for ''large'' is $19.0 million. The number of directly regulated entities for purposes of analyzing the economic impacts and describing those that are small businesses is selected based on permits held. Since this proposed regulation applies only to the businesses which hold permits in 4 areas managed by the conservation measures being amended, only those business entities are evaluated. Business entities that do not own vessels with directly regulated permits are not described.

There are 379 distinct entities identified as directly regulated entities in this action, those that held permits in Areas 2, 3, 4 or 5, or some combination. There were 373 entities that were classified as ''small,'' while the remaining 6 were classified as ''large.'' All 6 of the large businesses were designated as shellfish. Until further guidance is provided, for RFA analyses, business entities are classified into the SBA defined categories based on which activity, in the most recent year, produced the greatest gross revenue. An advantage of this approach is that entities are defined as large or small one time for the duration of a year, maintaining action to action consistency. As far as determining whether a business is large or small, once its major activity is determined (based on 2012) the average total revenue from all activities over the most recent three years (2010–2012) is applied against the appropriate threshold.

Of the 373 small entities, 180 are considered a shellfish business, 121 are considered a finfish business, 3 are considered a for-hire business, and 69 could not be identified as either because even though they had a lobster permit (in Areas 1, 2, 3 or 4) they had no earned revenue from fishing activity. Because they had no revenue in the last 3 years, they would be considered small by default, but would also be considered as latent effort.

The entity definition used by the Social Sciences Branch uses only unique combinations of owners. That is, entities are not combined if they have a shared owner. Section 3 of the SBA defines affiliation as: Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated (13 CFR 121.103(f)).

TABLE 4—ESTIMATE OF THE NUMBER OF SMALL ENTITIES

Entity type	Number of entities	Average entity revenue
Shellfish	180	$429,000.
Finfish	121	$363,000.
No revenue	69	0.
For-hire	3	confidential.
Total	373	

Table 4 describes the number of regulated small entities and all known revenue from all fishing related activity. Many of these ownership entities maintain diversified harvest portfolios, obtaining gross sales from many fisheries and not dependent on any one. However, not all are equally diversified. Those that depend most heavily on sales from harvesting species impacted directly by the proposed action are most likely to be affected. By defining dependence as deriving greater than 50-percent of gross sales from sales of lobster, we are able to identify those ownership groups most likely to be impacted by the proposed regulations. Using this threshold, we find that of the 373 small regulated entities, 180 of them are lobster-dependent.

A person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, must apply for and receive a ''confirmation of history'' (CPH) if the fishing and permit history of such vessel has been retained lawfully by the applicant. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time. The ownership data based on the permits held does not contain information on CPH permits. A total of 23 CPH's exist for lobster Areas 2, 3, and 4: 8 for Area 1, 9 for Area 3, and 6 for Area 4. One CPH qualifies for a permit in Area 2 and 3, while one CPH qualifies in all 3 of these areas.

While considering the number of affected entities, it is also worth noting that the vast majority of permit holders are either dually permitted (i.e., issued both a federal and state permit) or otherwise subject to a state's lobster regulations. Accordingly, most all Federal permit holders will be required to comply with the proposed measures

even if NMFS does not implement these measures. In other words, these federal permit holders will be obligated to comply with these measures and responsibilities attendant to their state permit regardless of whether these same measures are also required under their Federal permit.

Descriptions of Significant Alternatives Which Minimize Any Significant Economic Impact of Proposed Action on Small Entities

Due to the expected high rate of dual permitting and that the states are already compliant with broodstock measures, the majority of Federal vessels must already abide by these requirements, and therefore have already been impacted. For those vessels not dually permitted, broodstock measures can be expected to have a limited economic impact to permit holders. Because the proposed regulations are consistent with Commission recommendations and current state regulations, developing alternative measures would likely create inconsistencies and regulatory disconnects with the states and would therefore, likely worsen potential economic impacts. Therefore, no alternatives to broodstock measures are considered.

Because the Trap Transfer Program may ease economic impacts of trap reductions and provide added additional business flexibility, we propose to implement trap reductions at roughly the same time, or as close as possible, as the Trap Transfer Program, as recommended by the Commission. In other words, we have timed the trap reductions so that fishers will be able to activate their transferred traps moments after their allocation is reduced. In this way, fishers will not have to fish with reduced traps while waiting for their transferred traps to become allocated. This could mitigate the impacts of the trap reductions because fishers would be able to transfer traps based on their reduced allocation, prior to the cuts becoming effective. They could buy traps before the cuts take effect and minimize the impacts to their businesses resulting from the trap reductions. To further mitigate trap reductions, a permit holder could also choose to tend his or her remaining traps more often in an attempt to harvest more lobsters and recover income lost from the trap reductions. When considered in conjunction with trap transferability, permit holders remaining in the fishery may be able to transfer in traps up to their original trap cap (i.e., transfer in traps to make up for traps lost through trap reductions). Though this will require capital, the ability to acquire additional traps may help another set of permit holders compensate for trap reductions. Finally, the permit holders who elect to leave the fishery and transfer out traps will be compensated immediately by those fishers purchasing traps.

Given the novelty of trap transferability, it is unclear how much time will be needed for trap sellers and buyers to meet and propose transfers, for Federal and state agencies to meet, reconcile, and approve the proposed transfers, and for permits and trap tag orders to reflect the approved transfer. Consequently, it might prove challenging for all permit holders to participate and complete their desired trap transfer transactions in this first year, which might take on added importance given the proposed trap reductions on April 30, 2015. On the other hand, a delay could exacerbate the condition of the poor stock which could also result in losses in revenue over time. Therefore, we are requesting comment on the proposed April 30, 2015, trap cut date and whether alternative dates, including later dates, such as a 1-year delay, might better advance lobster management objectives. Should the Commission and our state partners suggest a delay and/or alternative approach, we would develop an alternative formally analyzing these impacts. At present, however, such an alternative fails to accomplish the stated objectives of the rule insofar as unilateral divergence from the Commission's recommendations would create regulatory disconnects with the states and potentially undermine the Lobster Plan.

As discussed in greater detail in the EA, we considered, but rejected two other alternatives, where trap reductions are theoretically approved out-of-sync (i.e., either 5–6 months before or 5–6 months after) with trap transfers. Under either of these scenarios, some permit holders would be prevented from participating in the Trap Transfer Program following trap cuts, resulting in potential loss of economic opportunity, until additional traps could be required. For permit holders whose business model is predicated on fishing at the trap cap, they would be forced to fish at reduced and presumably unprofitable levels for nearly half the fishing year. Because these alternatives may increase economic impacts, the measures proposed in this action are the alternatives which minimize any significant economic impact.

Reporting, Recordkeeping and Other Compliance Requirements

This action contains no new collection-of-information, reporting, or recordkeeping requirements.

Duplication, Overlap or Conflict With Other Federal Rules

This action does not duplicate, overlap, or conflict with any other Federal Laws.

List of Subjects in 50 CFR Part 697

Fisheries, fishing.

Dated: July 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 697 is proposed to be amended as follows:

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

■ 1. The authority citation for part 697 continues to read as follows:

Authority: 16 U.S.C. 5101 *et seq.*

■ 2. In § 697.2, the definitions of ''Federal Area 1 Limited Access Program,'' ''Federal Area 2 Limited Access Program,'' ''Federal Area 3 Limited Access Program,'' ''Federal Area 4 Limited Access Program,'' ''Federal Area 5 Limited Access Program,'' and ''Federal Outer Cape Area Limited Access Program'' are added in alphabetical order to read as follows:

§ 697.2 Definitions.

* * * * *

Federal Area 1 Limited Access Program means the limited access program restricts trap fishing in Area 3 to those federal lobster permits with qualified and allocated Area 1 traps, as identified in these regulations at § 697.4(a)(7)(ii).

Federal Area 2 Limited Access Program means the limited access program restricts trap fishing in Area 3 to those federal lobster permits with qualified and allocated Area 2 traps, as identified in these regulations at § 697.4(a)(7)(ii).

Federal Area 3 Limited Access Program means the limited access program restricts trap fishing in Area 3 to those federal lobster permits with qualified and allocated Area 3 traps, as identified in these regulations at § 697.4(a)(7)(ii).

Federal Area 4 Limited Access Program means the limited access program restricts trap fishing in Area 3

to those federal lobster permits with qualified and allocated Area 4 traps, as identified in these regulations at § 697.4(a)(7)(ii).

Federal Area 5 Limited Access Program means the limited access program restricts trap fishing in Area 3 to those federal lobster permits with qualified and allocated Area 5 traps, as identified in these regulations at § 697.4(a)(7)(ii).

Federal Outer Cape Cod Area Limited Access Program means the limited access program restricts trap fishing in Area 3 to those federal lobster permits with qualified and allocated Outer Cape Cod Area traps, as identified in these regulations at § 697.4(a)(7)(ii).

* * * * *

■ 3. In § 697.7, revise paragraphs (c)(1)(xxx) and (c)(3)(iii), to read as follows:

§ 697.7 Prohibitions

* * * * *

(c) * * *

(1) * * *

(xxx) *Seasonal Closures* The following areas are closed seasonally to lobster fishing.

(A) *Outer Cape Area seasonal closure.* The Federal waters of the Outer Cape Area shall be closed to lobster fishing with traps by Federal lobster permit holders from January 15 through March 15.

(*1*) Lobster fishing with traps is prohibited in the Outer Cape Area during this seasonal closure. Federal trap fishers are prohibited from possessing or landing lobster taken from the Outer Cape Area during the seasonal closure.

(*2*) All lobster traps must be removed from Outer Cape Area waters before the start of the seasonal closure and may not be re-deployed into Area waters until after the seasonal closure ends. Federal trap fishers are prohibited from setting, hauling, storing, abandoning or in any way leaving their traps in Outer Cape Area waters during this seasonal closure. Federal lobster permit holders are prohibited from possessing or carrying lobster traps aboard a vessel in Outer Cape Area waters during this seasonal closure unless the vessel is transiting through the Outer Cape Area pursuant to paragraph (c)(1)(xxx)(A)(*4*) of this section.

(*3*) The Outer Cape Area seasonal closure relates only to the Outer Cape Area. The restrictive provisions of § 697.3 and § 697.4(a)(7)(v) do not apply to this closure. Federal lobster permit holders with an Outer Cape Area designation and another Lobster Management Area designation on their Federal lobster permits would not have to similarly remove their lobster gear from the other designated management areas.

(*4*) Transiting Outer Cape Area. Federal lobster permit holders may possess lobster traps on their vessels in the Outer Cape Area during the seasonal closure only if:

(*i*) The trap gear is stowed; and

(*ii*) The vessel is transiting the Outer Cape Area. For the purposes of this section, transiting shall mean passing through the Outer Cape Area without stopping to reach a destination outside the Outer Cape Area.

(*5*) The Regional Administrator may authorize a permit holder or vessel owner to haul ashore lobster traps from the Outer Cape Area during the seasonal closure without having to engage in the exempted fishing process in § 697.22, if the permit holder or vessel owner can establish the following:

(*i*) That the lobster traps were not able to be hauled ashore before the seasonal closure due to incapacity, vessel/mechanical inoperability, and/or poor weather; and

(*ii*) That all lobsters caught in the subject traps will be immediately returned to the sea.

(*iii*) The Regional Administrator may condition this authorization as appropriate in order to maintain the overall integrity of the closure.

(B) *Area 4 seasonal closure.* The Federal waters of Area 4 shall be closed to lobster fishing from February 1 through March 31.

(*1*) Lobster fishing is prohibited in Area 4 during this seasonal closure. Federal lobster permit holders are prohibited from possessing or landing lobster taken from Area 4 during the seasonal closure.

(*2*) All lobster traps must be removed from Area 4 waters before the start of the seasonal closure and may not be re-deployed into Area waters until after the seasonal closure ends. Federal trap fishers are prohibited from setting, hauling, storing, abandoning or in any way leaving their traps in Area 4 waters during this seasonal closure. The following exceptions apply to the Area 4 seasonal closure:

(*i*) Lobster fishers will have a 2-week grace period from February 1 to February 14 to remove all lobster gear from the closed area. During this grace period, any hauled trap must not be re-set and must be removed from the area. Any lobsters taken from traps during this grace period must be returned to the sea immediately and any Federal lobster permit holder retrieving Area 4 traps during this grace period is prohibited from possessing on board any lobster regardless of the area from which the lobster may have been harvested.

(*ii*) Lobster fishers have a 1-week grace period from March 24 to March 31 to re-set gear in the closed area. During this grace period, re-set traps may not be re-hauled and any Federal lobster permit holder re-setting Area 4 traps during this grace period is prohibited from possessing on board any lobster regardless of the area from which the lobster may have been harvested.

(*3*) Federal lobster permit holders are prohibited from possessing or carrying lobster traps aboard a vessel in Area 4 waters during this seasonal closure unless the vessel operating subject to the grace period identified in paragraph (*ii*) or is transiting through Area 4 pursuant to paragraph (c)(1)(xxx)(B)(*5*) of this section.

(*4*) The Area 4 seasonal closure relates only to Area 4. The restrictive provisions of § 697.3 and § 697.4(a)(7)(v) do not apply to this closure. Federal lobster permit holders with an Area 4 designation and another Lobster Management Area designation on their Federal lobster permits would not have to similarly remove their lobster gear from the other designated management areas.

(*5*) Transiting Area 4. Federal lobster permit holders may possess lobster traps on their vessels in Area 4 during the seasonal closure only if:

(*i*) The trap gear is stowed; and

(*ii*) The vessel is transiting the Area 4. For the purposes of this section, transiting shall mean passing through Area 4 without stopping, to reach a destination outside Area 4.

(*6*) The Regional Administrator may authorize a permit holder or vessel owner to haul ashore lobster traps from Area 4 during the seasonal closure without having to engage in the exempted fishing process in § 697.22, if the permit holder or vessel owner can establish the following:

(*i*) That the lobster traps were not able to be hauled ashore before the seasonal closure due to incapacity, vessel/mechanical inoperability, and/or poor weather; and

(*ii*) That all lobsters caught in the subject traps will be immediately returned to the sea.

(*iii*) The Regional Administrator may condition this authorization as appropriate in order to maintain the overall integrity of the closure.

(C) *Area 5 seasonal closure.* The Federal waters of Area 5 shall be closed to lobster fishing from February 1 through March 31.

(*1*) Lobster fishing is prohibited in Area 5 during this seasonal closure. Federal lobster permit holders are

prohibited from possessing or landing lobster taken from Area 5 during the seasonal closure.

(*2*) All lobster traps must be removed from Area 5 waters before the start of the seasonal closure and may not be re-deployed into Area waters until after the seasonal closure ends. Federal trap fishers are prohibited from setting, hauling, storing, abandoning or in any way leaving their traps in Area 5 waters during this seasonal closure. The following exceptions apply to the Area 5 seasonal closure:

(*i*) Lobster fishers will have a 2-week grace period from February 1 to February 14 to remove all lobster gear from the closed area. During this grace period, any hauled trap must not be re-set and must be removed from the area. Any lobsters taken from traps during this grace period must be returned to the sea immediately and any Federal lobster permit holder retrieving Area 4 traps during this grace period is prohibited from possessing on board any lobster regardless of the area from which the lobster may have been harvested.

(*ii*) Lobster fishers have a 1-week grace period from March 24 to March 31 to re-set gear in the closed area. During this grace period, re-set traps may not be re-hauled and any Federal lobster permit holder re-setting Area 5 traps during this grace period is prohibited from possessing on board any lobster regardless of the area from which the lobster may have been harvested.

(*3*) Federal lobster permit holders are prohibited from possessing or carrying lobster traps aboard a vessel in Area 5 waters during this seasonal closure unless the vessel operating subject to the grace period identified in paragraph (*ii*) or is transiting through Area 5 pursuant to paragraph (c)(1)(xxx)(C)(*5*) of this section.

(*4*) The Area 5 seasonal closure relates only to Area 5. The restrictive provisions of § 697.3 and § 697.4(a)(7)(v) do not apply to this closure. Federal lobster permit holders with an Area 5 designation and another Lobster Management Area designation on their Federal lobster permits would not have to similarly remove their lobster gear from the other designated management areas.

(*5*) Transiting Area 5. Federal lobster permit holders may possess lobster traps on their vessels in Area 5 during the seasonal closure only if:

(*i*) The trap gear is stowed; and

(*ii*) The vessel is transiting the Area 5. For the purposes of this section, transiting shall mean passing through Area 5 without stopping, to reach a destination outside Area 5.

(*6*) The Regional Administrator may authorize a permit holder or vessel owner to haul ashore lobster traps from Area 5 during the seasonal closure without having to engage in the exempted fishing process in § 697.22, if the permit holder or vessel owner can establish the following:

(*i*) That the lobster traps were not able to be hauled ashore before the seasonal closure due to incapacity, vessel/mechanical inoperability, and/or poor weather; and

(*ii*) That all lobsters caught in the subject traps will be immediately returned to the sea.

(*iii*) The Regional Administrator may condition this authorization as appropriate in order to maintain the overall integrity of the closure.

* * * * *

(c) * * *

(3) * * *

(iii) The possession of egg-bearing female lobsters in violation of the requirements set forth in § 697.20(d), v-notched female American lobsters in violation of the v-notch requirements set forth in § 697.20(g), American lobsters that are smaller than the minimum sizes set forth in § 697.20(a), American lobsters that are larger than the maximum carapace sizes set forth in § 697.20(b), or lobster parts, possessed at or prior to the time when the aforementioned lobsters or parts are received by a dealer, will be prima facie evidence that such American lobsters or parts were taken or imported in violation of these regulations. A preponderance of all submitted evidence that such American lobsters were harvested by a vessel not holding a permit under this part and fishing exclusively within state or foreign waters will be sufficient to rebut the presumption.

* * * * *

■ 4. In § 697.19, revise paragraphs (b) through (k) and add (l) to read as follows:

§ 697.19 Trap limits and trap tag requirements for vessels fishing with lobster traps.

* * * * *

(b) *Area 2 trap limits.* The Area 2 trap limit is 800 traps. Federally permitted lobster fishing vessels may only fish with traps that have been previously qualified and allocated into Area 2 by the Regional Administrator, as part of the Federal Area 2 Limited Access Program. This allocation may be modified by trap cuts and/or trap transfers, but in no case shall the allocation exceed the trap limit.

(c) *Area 3 trap limits.* The Area 3 trap limit is 1,945 traps. Federally permitted lobster fishing vessels may only fish with traps that have been previously qualified and allocated into Area 3 by the Regional Administrator, as part of the Federal Area 3 Limited Access Program. This allocation may be modified by trap cuts and/or trap transfers, but in no case shall the allocation exceed the trap limit.

(d) *Area 4 trap limits.* The Area 4 trap limit is 1,440 traps. Federally permitted lobster fishing vessels may only fish with traps that have been previously qualified and allocated into Area 4 by the Regional Administrator, as part of the Federal Area 4 Limited Access Program. This allocation may be modified by trap cuts and/or trap transfers, but in no case shall the allocation exceed the trap limit.

(e) *Area 5 trap limits.* The Area 5 trap limit is 1,440 traps, unless the vessel is operating under an Area 5 Trap Waiver permit issued under § 697.26. Federally permitted lobster fishing vessels may only fish with traps that have been previously qualified and allocated into Area 5 by the Regional Administrator, as part of the Federal Area 5 Limited Access Program. This allocation may be modified by trap cuts and/or trap transfers, but in no case shall the allocation exceed the trap limit.

(f) *Outer Cape Area.* The Outer Cape Area trap limit is 800 traps. Federally permitted lobster fishing vessels may only fish with traps that have been previously qualified and allocated into the Outer Cape Area by the Regional Administrator, as part of the Federal Outer Cape Cod Area Limited Access Program. This allocation may be modified by trap cuts and/or trap transfers, but in no case shall the allocation exceed the trap limit.

(g) *Trap Cuts.* Trap allocations shall be reduced in the following Areas as set forth below:

(1) Area 2 allocations shall be reduced according to the following schedule:

Effective year of trap reduction	Area 2 reductions (percent)
April 30, 2015, 11:59 p.m.	25
April 30, 2016, 11:59 p.m.	5
April 30, 2017, 11:59 p.m.	5
April 30, 2018, 11:59 p.m.	5
April 30, 2019, 11:59 p.m.	5
April 30, 2020, 11:59 p.m.	5

(2) Area 3 allocations shall be reduced according to the following schedule:

Effective year of trap reduction	Area 3 reductions (percent)
April 30, 2015, 11:59 p.m.	5
April 30, 2016, 11:59 p.m.	5

Effective year of trap reduction	Area 3 reductions (percent)
April 30, 2017, 11:59 p.m.	5
April 30, 2018, 11:59 p.m.	5
April 30, 2019, 11:59 p.m.	5

(h) *Lobster trap limits for vessels fishing or authorized to fish in more than one EEZ management area.* A vessel owner who elects to fish in more than one EEZ Management Area is restricted to the lowest cap limit of the areas and may not fish with, deploy in, possess in, or haul back from any of those elected management areas more lobster traps than the lowest number of lobster traps allocated to that vessel for any one elected management area.

(i) *Conservation equivalent trap limits in New Hampshire state waters.* Notwithstanding any other provision, any vessel with a Federal lobster permit and a New Hampshire Full Commercial Lobster license may fish up to a maximum of 1,200 lobster traps in New Hampshire state waters, to the extent authorized by New Hampshire lobster fishery regulations. However, such vessel may not fish, possess, deploy, or haul back more than 800 lobster traps in the Federal waters of EEZ Nearshore Management Area 1, and may not fish more than a combined total of 1,200 lobster traps in the Federal and New Hampshire state waters portions of EEZ Nearshore Management Area 1.

(j) *Trap Tag Requirements for vessels fishing with lobster traps.* All lobster traps in Federal waters must have a valid Federal lobster trap tag permanently attached to the trap bridge or central cross-member. Federal lobster permit holders are eligible to receive Area 1 trap tags only if the Regional Administrator has qualified the permit to fish in Area 1 as part of the Federal Area 1 Limited Entry Program. Federal lobster permit holders are eligible to receive Area 2, 3, 4, 5 and/or Outer Cape Cod Area trap tags only if the Regional Administrator has allocated those traps as part of the Federal Area 2, 3, 4, 5 and/or Outer Cape Cod Area Limited Access Program. Any vessel with a Federal lobster permit may not possess, deploy, or haul back lobster traps in any portion of any lobster management area that do not have a valid, federally recognized trap tag permanently attached to the trap bridge or central cross-member.

(k) *Maximum lobster trap tags authorized for direct purchase.* In any fishing year, the maximum number of tags authorized for direct purchase by each permit holder is the applicable trap limit specified in paragraphs (a) through (f) of this section plus an additional 10 percent to cover trap loss.

(l) *EEZ Management Area 5 trap waiver exemption.* Any vessel issued an Area 5 Trap Waiver permit under § 697.4(p) is exempt from the provisions of this section.

* * * * *

■ 5. In § 697.20, revise paragraphs (a)(5) through (a)(8), (b)(5) and (b)(6), (d)(1) and (d)(2), (g)(3) and (g)(4), and remove paragraphs (b)(7) and (b)(8) and (g)(5) through (g)(8) to read as follows:

* * * * *

§ 697.20 Size, harvesting and landing requirements.

(a) * * *

(5) Through April 30, 2015, the minimum carapace length for all American lobsters harvested in or from the Offshore Management Area 3 is 3½ inches (8.89 cm).

(6) Through April 30, 2015, the minimum carapace length for all American lobsters landed, harvested or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Offshore Management Area 3 is 3½ inches (8.89 cm).

(7) Effective May 1, 2015, the minimum carapace length for all American lobsters harvested in or from the Offshore Management Area 3 is 3 17/32 inches (8.97 cm).

(8) Effective May 1, 2015, the minimum carapace length for all American lobsters landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Offshore Management Area 3 is 3 17/32 inches (8.97 cm).

* * * * *

(b) * * *

(5) The maximum carapace length for all American lobster harvested in or from EEZ Offshore Management Area 3 or the Outer Cape Lobster Management Area is 6¾ inches (17.15 cm).

(6) The maximum carapace length for all American lobster landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Offshore Management Area 3 or the Outer Cape Lobster Management Area is 6¾ inches (17.15 cm).

(d) * * *

(1) Any berried female lobster harvested in or from the EEZ must be returned to the sea immediately. If any berried female lobster is harvested in or from the EEZ Nearshore Management Areas 1, 2, 4, or 5, or in or from the EEZ Offshore Management Area 3, north of 42° 30′ North latitude, it must be v-notched before being returned to sea immediately.

(2) Any berried female lobster harvested or possessed by a vessel issued a Federal limited access lobster permit must be returned to the sea immediately. If any berried female lobster is harvested in or from the EEZ Nearshore Management Areas 1, 2, 4, or 5, or in or from the EEZ Offshore Management Area 3, north of 42°30′ North latitude, it must be v-notched before being returned to sea immediately.

* * * * *

(g) * * *

(3) No person may possess any female lobster possessing a standard v-shaped notch harvested in or from the EEZ Nearshore Management Area 2, 4, 5, 6, Outer Cape Area or the EEZ Offshore Management Area 3.

(4) No vessel, owner, or operator issued a Federal limited access American lobster permit fishing in or electing to fish in the EEZ Nearshore Management Area 2, 4, 5, 6, Outer Cape Area or the EEZ Offshore Management Area 3 may land, harvest or possess any female lobster possessing a standard v-shaped notch.

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Notices

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Friday, July 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

Submission for OMB Review; Comment Request

July 21, 2014.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by August 25, 2014 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Johne's Disease.

OMB Control Number: 0579–0338.

Summary of Collection: The Animal Health Protection Act of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The regulations in Title 9, Chapter 1, Subchapter C of the Code of Federal Regulations, govern the interstate movement of animals to prevent the dissemination of livestock and poultry diseases in the United States.

Need and Use of the Information: Animal and Plant Health Inspection Service (APHIS) will collect information using form VS 1–27, Permit for Movement of Restricted Animals and Official Ear Tags. APHIS will collect the following information from formVS–127: (1) The number of animals to be moved; (2) the species of the animals; (3) the points of origin and destination, and (4) the names and addresses of the consignor and the consignee. Failing to collect this information would greatly hinder the control of Johne's disease and possible lead to increased prevalence.

Description of Respondents: Business or other for-profit.

Number of Respondents: 3.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 3.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2014–17494 Filed 7–24–14; 8:45 am]

BILLING CODE 3410–34–P

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 via teleconference. 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 and vote on a project proposal for Title II funding on behalf of the Juneau RAC which does not have enough members for quorum.

DATES: The meeting will be held at 9:00 a.m. on July 30, 2014.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held via teleconference, for the teleconference information, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

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.

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 July 20, 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; 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.

Date: June 30, 2014.

Chad VanOrmer,

Admiralty Island National Monument Ranger.

[FR Doc. 2014–17540 Filed 7–24–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Advisory Committee on Agriculture Statistics

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of re-establishment of the charter for the Advisory Committee on Agriculture Statistics.

SUMMARY: The U.S. Department of Agriculture (USDA) is seeking renewal of the 2-year charter for its discretionary committee, the Advisory Committee on Agriculture Statistics. Effective October 1, 1996, responsibility for the census of agriculture program was transferred to the National Agricultural Statistics Service (NASS) at USDA from the Bureau of the Census, U.S. Department of Commerce. Effective February 2, 1997, NASS also received the transferred program positions and staff from the Bureau of the Census, U.S. Department of Commerce. Responsibility for the Advisory Committee on Agriculture Statistics, which is a discretionary committee and was established by agency authority, was transferred, along with its allocated slot, to USDA with the census of agriculture program.

Authority: The Advisory Committee on Agriculture Statistics was originally established by the Secretary of Commerce on July 16, 1962. The Committee is also established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App.2.

FOR FURTHER INFORMATION CONTACT: Hubert H. Hamer, Director, Statistics Division, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–3896, or email *HQ_SD_OD@nass.usda.gov*.

SUPPLEMENTARY INFORMATION:

Purpose: The purpose of the Committee is to advise the Secretary on the conduct of the periodic censuses and surveys of agriculture, other related surveys, and the types of agricultural information to obtain from respondents. The committee also prepares recommendations regarding the content of agriculture reports, and presents the views and needs for data of major suppliers and users of agriculture statistics. The committee draws on the experience and expertise of its members to form a collective judgment concerning agriculture data collected and the statistics issued by the National Agricultural Statistics Service (NASS).

Description of Duties: The duties of the Committee are solely advisory in nature. The Committee makes recommendations to the Secretary of Agriculture with regard to the agricultural statistics program of NASS, and such other matters as it may deem advisable, or which the Secretary of Agriculture, Under Secretary for Research, Education, and Economics, or the Administrator of NASS may request.

Agency or Official to Whom the Committee Reports: The Committee reports to the Secretary of Agriculture through the Under Secretary for Research, Education, and Economics.

Committee Membership: The Secretary of Agriculture will appoint the membership of the Committee. Furthermore, members will serve for two-year terms, and can serve no more than three consecutive terms. Membership will consist of 20 individuals with diverse capabilities distinguished by their broad range of knowledge and interest in, though not limited to, agricultural economics, rural sociology, farm policy analysis, and agricultural education. Members will also be drawn from representatives of state and local governments; agriculture-related industry and trade or marketing associations; major national farm organizations; and producer organizations. A representative from the Bureau of the Census, U.S. Department of Commerce, and a representative from the Economic Research Service, USDA, shall serve as ex officio members of the Committee.

This Committee will be fairly balanced in its membership in terms of the points of view represented and the functions to be performed. Steps will be taken to encourage fresh points of view, such as establishing staggered membership terms and limiting the number of renewed memberships.

Equal opportunity practices in accordance with USDA policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership will include to the extent possible, individuals with demonstrated ability to represent the needs of all racial and ethnic groups, women and men, and persons with disabilities.

The USDA prohibits discrimination in all of 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, political beliefs, genetic information, reprisal, or because all or part of an individual's income is derived from any public assistance program.

Ethics Statement: To maintain the highest levels of honesty, integrity and ethical conduct, no Committee or subcommittee member shall participate in any ''specific party matters'' (i.e., matters are narrowly focused and typically involve specific transactions between identified parties) such as a lease, license, permit, contract, claim, grant, agreement, or related litigation with the Department in which the member has a direct or indirect financial interest. This includes the requirement for Committee or Subcommittee members to immediately disclose to the DFO any specific party matter in which the member's immediate family, relatives, business partners or employer would be directly seeking to financially benefit from the Committee's recommendations.

All members will receive ethics training to identify and avoid any actions that would cause the public to question the integrity of the Committee's advice and recommendations. Members who are appointed as ''Representatives'' are not subject to Federal ethics laws because such appointment allows them to represent the point(s) of view of a particular group, business sector or

segment of the public. Members appointed as ''Special Government Employees'' (SGEs) are considered intermittent Federal employees and are subject to Federal ethics laws. SGE's are appointed due to their personal knowledge, academic scholarship, background or expertise. No SGE may participate in any activity in which the member has a prohibited financial interest. Appointees who are SGEs are required to complete and submit a Confidential Financial Disclosure Report (OGE–450 form) and, upon request, USDA will assist SGEs in preparing these financial reports. To ensure the highest level of compliance with applicable ethical standards USDA will provide ethics training to SGEs on an annual basis. The provisions of these paragraphs are not meant to exhaustively cover all Federal ethics laws and do not affect any other statutory or regulatory obligations to which advisory committee members are subject.

Recordkeeping: The records of this Committee, formally and informally established subcommittees, or other subgroups of the committee, shall be handled in accordance with General Records Schedule 26, Item 2 or other approved agency records disposition schedule. These records shall be available for public inspection and copying, subject to the Freedom of Information Act, 5 U.S.C. 552. Information about this Committee is available online at: *http://www.nass.usda.gov/About_NASS/Advisory_Committee_on_Agriculture_Statistics/index.asp.*

Signed at Washington, DC, July 21, 2014.

R. Renee Picanso,

Associate Administrator.

[FR Doc. 2014–17554 Filed 7–24–14; 8:45 am]

BILLING CODE 3410–20–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maine Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting and briefing meeting of the Maine Advisory Committee to the Commission will convene at 12:00 p.m. (EDT) on Thursday, August, 14, 2014, at Lewiston City Hall, City Council Chamber, 27 Pine Street, Lewiston, ME 04240. The purpose of the briefing meeting is to hear from government officials, experts, and advocates regarding sentencing disparities in Maine. The planning meeting will include reviewing and voting on the committee's Human Trafficking report.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by Monday, September 15, 2014. Comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at 202–376–7533.

Persons needing accessibility services should contact the Eastern Regional Office at least 10 working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov*, or to contact the Eastern Regional Office at the above phone number, email or street address.

The meetings will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated July 22, 2014.

David Mussatt,

Chief, Regional Programs Coordination Unit.

[FR Doc. 2014–17547 Filed 7–24–14; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–31–2014]

Foreign-Trade Zone 119—Minneapolis, Minnesota; Authorization of Limited Production Activity; The Coleman Company, Inc. (Textile-Based Personal Flotation Devices); Sauk Rapids, Minnesota

On March 13, 2014, The Coleman Company, Inc., an operator of FTZ 119, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for its facility in Sauk Rapids, Minnesota.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (79 FR 18509–18510, 4–2–2014). The FTZ Board has determined that further review of part of the proposed activity is warranted at this time. The production activity described in the notification is authorized on a limited basis, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14, and further subject to a restriction requiring that all foreign status textile fabrics and cases of textile materials (classified within HTSUS Subheadings 4202.92, 5407.42, 5407.51, 5407.52, 5407.82, 6004.10, 5906.91, and 5806.32) be admitted to the zone in domestic (duty-paid) status (19 CFR 146.43) or privileged foreign status (19 CFR 146.41).

Dated: July 21, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–17580 Filed 7–24–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–29–2014]

Foreign-Trade Zone 72—Indianapolis, Indiana, Authorization of Production Activity, Ingram Micro Mobility/Brightpoint North America L.P. (Kitting of Pedometer Products and Accessories), Plainfield, Indiana

On March 20, 2014, the Indianapolis Airport Authority, grantee of FTZ 72, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Ingram Micro Mobility/Brightpoint North America L.P., within Subzone 72S, in Plainfield, Indiana.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (79 FR 18011–18012, 3–31–2014). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: July 18, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–17474 Filed 7–24–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–50–2014]

Foreign-Trade Zone 124—Gramercy, Louisiana; Application for Expansion of Subzone 124H; Bollinger Shipyards, Inc.

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Port of South Louisiana, grantee of FTZ 124, requesting the expansion of Subzone 124H located at the facilities of Bollinger Shipyards, Inc., in Golden Meadow, Louisiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on July 17, 2014.

The grantee proposes to expand Subzone 124H-Site 10 to include an additional 46.212 acres. The additional acreage is located at 236 A. T. Gisclair Road in Golden Meadow. No changes to the subzone's existing production authority have been requested at this time.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is September 3, 2014. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 18, 2014.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: July 17, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–17472 Filed 7–24–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–51–2014]

Foreign-Trade Zone 122—Corpus Christi, Texas; Application for Reorganization (Expansion of Service Area) Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Port of Corpus Christi, Authority, grantee of FTZ 122, requesting authority to reorganize the zone to expand its service area under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on July 18, 2014.

FTZ 122 was approved by the FTZ Board on September 5, 1985 (Board Order 310, 50 FR 38020, 9/19/1985) and reorganized under the ASF on July 16, 2013 (Board Order 1907, 78 FR 44523–44524, 7/24/2013). The zone currently has a service area that includes Nueces, San Patricio, Aransas, Jim Wells, Kleberg and Bee Counties, Texas.

The applicant is now requesting authority to expand the service area of the zone to include Refugio County, Texas, as described in the application. If approved, the grantee would be able to serve sites throughout the expanded service area based on companies' needs for FTZ designation. The proposed expanded service area is adjacent to the Corpus Christi Customs and Border Protection port of entry.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is September 23, 2014. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 8, 2014.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: July 18, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–17471 Filed 7–24–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Chlorinated Isocyanurates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on chlorinated isocyanurates (chlorinated isos) from the People's Republic of China (PRC). The period of review (POR) is June 1, 2012, through May 31, 2013. This administrative review covers five producers/exporters: (1) Arch Chemicals (China) Co. Ltd. (Arch China); (2) Hebei Jiheng Chemical Co., Ltd.(Jiheng); (3) Heze Huayi Chemical Co. Ltd. (Heze); (4) Juancheng Kangtai Chemical Co., Ltd. (Kangtai); and (5) Zhucheng Taisheng Chemical Co., Ltd. (Zhucheng). Jiheng and Kangtai are the two producers/exporters being individually examined as mandatory respondents. We preliminarily determine that Jiheng and Kangtai made sales in the United States at prices below normal value (NV). Interested parties are invited to comment on these preliminary results.

DATES: *Effective:* July 25, 2014.

FOR FURTHER INFORMATION CONTACT: Sean Carey, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW.,

Washington, DC 20230; telephone: (202) 482–3964.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The products covered by the order are chlorinated isos, which are derivatives of cyanuric acid, described as chlorinated s-triazine triones.[1] Chlorinated isos are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, 2933.69.6050, 3808.40.50, 3808.50.40 and 3808.94.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes only; the written product description of the scope of the order is dispositive.

Methodology

The Department has conducted this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). Export prices have been calculated in accordance with section 772 of the Act. Because the PRC is a non-market economy within the meaning of section 771(18) of the Act, normal value has been calculated in accordance with section 773(c) of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum, which is hereby adopted by this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's centralized electronic service system (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Department's Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

[1] For a complete description of the Scope of the Order, *see* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for the Preliminary Results of the 2012–2013 Antidumping Duty Administrative Review: Chlorinated Isocyanurates from the People's Republic of China,'' dated concurrently with this notice (Preliminary Decision Memorandum).

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist:

Exporter	Weight-average dumping margin percentage
Arch Chemicals (China) Co. Ltd*	21.51
Hebei Jiheng Chemical Co., Ltd	0.00
Juancheng Kangtai Chemical Co., Ltd	43.01
Heze Huayi Chemical Co. Ltd*	21.51
Zhucheng Taisheng Chemical Co., Ltd*	21.51

*The rate for these companies is the simple average of the calculated antidumping duty rates for Jiheng and Kangtai.

Disclosure and Public Comment

The Department intends to disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit written comments by no later than 30 days after the date of publication of these preliminary results of review.[2] Rebuttals to written comments may be filed by no later than five days after the written comments are filed.[3]

Any interested party may request a hearing within 30 days of publication of this notice.[4] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.[5]

The Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act unless this deadline is extended.

Assessment Rates

Upon issuing the final results of this new shipper review, the Department shall determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries covered by this review.[6] The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this new shipper review.

Where appropriate, we calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise.

Where appropriate, we calculated a per-unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. If an importer- (or customer-) specific assessment rate is *de minimis* (*i.e.,* less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

Also, the Department recently announced a refinement to its assessment practice in NME cases.[7] Pursuant to this refinement in practice, 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.[8] Additionally, 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.[9]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments

[2] *See* 19 CFR 351.309(c); *see also* 19 CFR 351.303 (for general filing requirements).

[3] *See* 19 CFR 351.309(d).

[4] *See* 19 CFR 351.310(c).

[5] *See* 19 CFR 351.310(d).

[6] *See* 19 CFR 351.212(b)(1).

[7] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

[8] *Id.*

[9] *Id.*

of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporter's listed above, the cash deposit rate will be the rate established in the final results of this review (except, if the rate is zero or *de minimis,* a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the existing producer/exporter-specific combination rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be eligible for a separate rate, the cash deposit rate will be the PRC-wide rate of 285.63 percent; [10] 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 exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213 and 19 CFR 351.221(b)(4).

Dated: July 17, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

1. Background
2. Scope of the Order
3. Non-Market Economy Country Status
4. Separate Rates
5. Separate Rates for Non-Selected Companies
6. Surrogate Country
7. Date of Sale
8. Determination of Comparison Method
9. Results of the Differential Pricing Analysis
10. Fair Value Comparisons
11. U.S. Price
12. Value-Added Tax
13. Normal Value

[FR Doc. 2014–17484 Filed 7–24–14; 8:45 am]

BILLING CODE 3510–DS–P

[10] For an explanation on the derivation of the PRC-wide rate, *see Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China,* 70 FR 24502, 24505 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–008]

Calcium Hypochlorite From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* July 25, 2014.

SUMMARY: The Department of Commerce (''Department'') preliminarily determines that calcium hypochlorite from the People's Republic of China (''PRC'') is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''the Act''). The period of investigation (''POI'') is April 1, 2013, through September 30, 2013. The estimated margin of sales at LTFV is shown in the ''Preliminary Determination'' section of this notice. In accordance with 19 CFR 351.210(b)(2), the final determination will be issued 135 days after the date of publication of this preliminary determination in the **Federal Register**. Interested parties are invited to comment on this preliminary determination.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2593.

SUPPLEMENTARY INFORMATION:

Scope of the Investigation

The product covered by this investigation is calcium hypochlorite, regardless of form (*e.g.,* powder, tablet (compressed), crystalline (granular), or in liquid solution), whether or not blended with other materials, containing at least 10% available chlorine measured by actual weight. The scope also includes bleaching powder and hemibasic calcium hypochlorite.

Calcium hypochlorite has the general chemical formulation $Ca(OCl)_2$, but may also be sold in a more dilute form as bleaching powder with the chemical formulation, $Ca(OCl)_2.CaCl_2.Ca(OH)_2.2H_2O$ or hemibasic calcium hypochlorite with the chemical formula of $2Ca(OCl)_2.Ca(OH)_2$ or $Ca(OCl)_2.0.5Ca(OH)_2$. Calcium hypochlorite has a Chemical Abstract Service (''CAS'') registry number of 7778–54–3, and a U.S. Environmental Protection Agency (''EPA'') Pesticide Code (''PC'') Number of 014701. The subject calcium hypochlorite has an International Maritime Dangerous Goods (''IMDG'') code of Class 5.1 UN 1748, 2880, or 2208 or Class 5.1/8 UN 3485, 3486, or 3487.

Calcium hypochlorite is currently classifiable under the subheading 2828.10.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The subheading covers commercial calcium hypochlorite and other calcium hypochlorite. When tableted or blended with other materials, calcium hypochlorite may be entered under other tariff classifications, such as 3808.94.5000 and 3808.99.9500, which cover disinfectants and similar products. While the HTSUS subheadings, the CAS registry number, the U.S. EPA PC number, and the IMDG codes are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Methodology

The Department conducted this investigation in accordance with section 731 of the Act. Because all mandatory respondents in this investigation either withdrew from the proceeding or did not cooperate to the best of their ability with the Department's requests for information, the Department preliminarily determines that the application of adverse facts available (''AFA'') is warranted for this preliminary determination, in accordance with section 776 of the Act and 19 CFR 351.308.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum hereby adopted by this notice.[1] The Preliminary

[1] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Decision Memorandum for Preliminary Determination of the Antidumping Duty

Continued

Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). 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 Preliminary Decision Memorandum can be accessed directly on the Internet at *http://trade.gov/enforcement/*. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Combination Rates

In the *Initiation Notice,* the Department stated that it would calculate combination rates for the respondents that are eligible for a separate rate in this investigation.[2] Policy Bulletin 05.1 sets forth this practice.[3] However, as described in the Preliminary Decision Memorandum, all parties subject to this investigation are preliminarily found to be part of the PRC-wide entity, to which we do not assign a separate combination rate.[4]

Preliminary Determination

The preliminary weighted-average antidumping duty margin percentage is as follows:

Exporter	Weighted-average margin (%)
PRC-Wide Entity [5]	210.52

Disclosure [1] and Public Comment

Normally, the Department discloses to interested parties the calculations performed in connection with a preliminary determination within five days of the date of publication of the notice of preliminary determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because the Department preliminarily applied AFA to each of the mandatory respondents in this investigation, in accordance with section 776 of the Act, there are no calculations to disclose. Accordingly, the calculations performed in connection with this preliminary determination are not proprietary in nature, and are described in the Preliminary Decision Memorandum.

Interested parties are invited to comment on this preliminary determination. Interested parties may submit case briefs to the Department no later than 30 days after the date of publication of this preliminary determination.[6] A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to the Department.[7]

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically in IA ACCESS. An electronically filed document must be received successfully in its entirety in IA ACCESS, by 5:00 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice.[8] Hearing requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues you intend to present at the hearing. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Suspension of Liquidation

In accordance with section 733(d) of the Act, the Department will instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of calcium hypochlorite from the PRC, as described in the ''Scope of the Investigation'' section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Furthermore, consistent with our practice, where the product under investigation is also subject to a concurrent countervailing duty investigation, we instruct CBP to require a cash deposit equal to the amount by which the normal value exceeds the export price or constructed export price, less the amount of the countervailing duty determined to constitute an export subsidy. In this LTFV investigation, with regard to PRC-wide entity, export subsidies constitute 9.62 percent [9] of the preliminarily calculated countervailing duty rate in the concurrent countervailing duty investigation, and, thus, we will offset the PRC-wide rate of 210.52 percent by the countervailing duty rate attributable to export subsidies (*i.e.,* 9.62 percent) to calculate the cash deposit rate for this LTFV investigation.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to a request from Wuhan Rui Sunny Chemical Co., Ltd., we are postponing the final determination and extending the provisional measures from a four-month period to no more than six months.[10] Accordingly, we will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[11]

International Trade Commission (''ITC'') Notification

In accordance with section 733(f) of the Act, we notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of calcium hypochlorite, or sales (or the likelihood of sales) for importation, of the merchandise under consideration within 45 days of our final determination.

This determination is issued and published in accordance with sections

Investigation of Calcium Hypochlorite from the People's Republic of China,'' dated concurrently with this notice (''Preliminary Decision Memorandum'').

[2] *See Calcium Hypochlorite From the People's Republic of China: Initiation of Antidumping Duty Investigation,* 79 FR 2410, 2414 (January 14, 2014) (''*Initiation Notice*'').

[3] *See* Enforcement and Compliance Policy Bulletin No. 05.1 ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (''Policy Bulletin 05.1''), available on the Department's Web site at *http://enforcement.trade.gov/policy/bull05–1.pdf.*

[4] *Id.*

[5] The PRC-wide entity includes China Petrochemical International (Wuhan) Co., Ltd., Tianjin JinBin International Trade Co., Ltd., and Wuhan Rui Sunny Chemical Co., Ltd.

[6] *See* 19 CFR 351.309(c)(1)(i).

[7] *See* 19 CFR 351.309(c)(2).

[8] *See* 19 CFR 351.310(c).

[9] The following subsidy programs in the preliminary determination of the concurrent countervailing duty investigation are export subsidies: Discounted Loans for Export-Oriented Enterprises (1.06%), Export Credits from China's Export-Import Bank (1.06%), Export Credit Insurance from China Export and Credit Insurance Corporation (Sinosure) (1.06%), Foreign Trade Development Fund (0.55%), Famous Brands Program (0.55%), Provision of Shipping for LTAR (5.34%). *See Calcium Hypochlorite From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination,* 79 FR 30082 (May 27, 2014), and accompanying Preliminary Decision Memorandum at 11.

[10] *See* Letter to the Secretary of Commerce from Wuhan Rui Sunny Chemical Co., Ltd., ''Request for Extension of Final Determination'' (July 1, 2014).

[11] *See also* 19 CFR 351.210(e).

733(f) and 777(i)(1) of the Act and 19 CFR 351.205(b)(2).

Dated: 16 July 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

List of Topics Discussed in the Preliminary Decision Memorandum:

I. Summary
II. Background
1. Initiation
2. Period of Investigation
3. Postponement of Preliminary Determination
4. Postponement of Final Determination and Extension of Provisional Measures
5. Scope of the Investigation
6. Scope Comments
7. Selection of Respondents
III. Discussion of the Methodology
1. Non-Market Economy Country
2. Separate Rates
3. Total Adverse Facts Available for Rui Sunny
A. Background
B. Facts Available and Selection Based Upon Adverse Inferences for Rui Sunny
4. The PRC-Wide Entity
5. Application of Facts Available and Selection Based Upon Adverse Inferences for the PRC-Wide Entity
6. Corroboration of AFA Rate
7. Verification
8. Section 777A(f) of the Act
IV. ITC Notification
V. Conclusion

[FR Doc. 2014–17487 Filed 7–24–14; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–905]

Certain Polyester Staple Fiber From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on certain polyester staple fiber from the People's Republic of China (''PRC''). The period of review (''POR'') is June 1, 2012, through May 31, 2013. The Department preliminarily determines that Takayasu Industrial (Jiangyin) Co., Ltd. (''Takayasu'') did not sell subject merchandise in the United States at prices below normal value (''NV'') during the POR June 1, 2012, through May 31, 2013. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (''CBP'') to liquidate the appropriate entries without regard to antidumping duties. Interested parties are invited to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Steven Hampton, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0116.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to the order is certain polyester staple fiber.[1] The product is currently classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') numbers 5503.20.0045 and 5503.20.0065. Although the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope of the order remains dispositive.

Methodology

The Department conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (''the Act''). For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of the topics included in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov,* and it is available to all parties in the Central Records Unit (''CRU''), room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margin exists for the period June 1, 2012, through May 31, 2013:

Exporter	Weighted-average dumping margin (%)
Takayasu Industrial (Jiangyin) Co., Ltd	0.00

Disclosure, Public Comment & Opportunity To Request a Hearing

The Department will disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Pursuant to 19 CFR 351.309(c), interested parties may submit cases briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[2] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[3] Case and rebuttal briefs should be filed using IA ACCESS.[4] An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via IA ACCESS. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs.

The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days

[1] *See* Decision Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled ''Preliminary Results and Rescission in Part of 2011–2012 Antidumping Duty Administrative Review: Certain Polyester Staple Fiber from the People's Republic of China'' (Preliminary Decision Memorandum) issued concurrently with this notice for a complete description of the Scope of the Order.

[2] *See* 19 CFR 351.309(d).

[3] *See* 19 CFR 351.309(c)(2) and (d)(2).

[4] *See* 19 CFR 351.303.

after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[5] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review.

For any individually examined respondent whose weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent), we will calculate importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[6] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is not zero or *de minimis.* Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the PRC-wide entity, we will instruct CBP to assess antidumping duties at an *ad valorem* rate as appropriate.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by sections 751(a)(2)(C) of the Act: (1) For Takayasu, which at the outset of this review was not eligible for a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is *de minimis,* where the cash deposit rate will be zero); (2) For previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior completed segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific cash deposit rate published for the most recently completed period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the PRC-wide entity, 44.30 percent;[7] 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 exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 16, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum:

1. Summary
   a. Case History
   b. Scope of the Order
2. Discussion of the Methodology
   a. Non-Market Economy Status
   b. Separate Rates
   c. Surrogate Country
   d. Date of Sale
   e. Fair Value Comparisons
   i. Determination of Comparison Method
   ii. Results of the Differential Pricing Analysis
   f. U.S. Price
   i. Export Price
   ii. Value Added Tax
   g. Normal Value
   h. Factor Valuations
   i. Currency Conversion
3. Recommendation

[FR Doc. 2014–17495 Filed 7–24–14; 8:45 am]

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[5] *See* 19 CFR 351.212(b)(1).

[6] In these final results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[7] *See Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 72 FR 19690, 19693 (April 19, 2007).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–947]

Steel Grating From the People's Republic of China: Notice of Court Decision Not in Harmony With the Final Determination in the Less-Than-Fair-Value Investigation and Notice of Amended Final Determination Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On April 9, 2014, the United States Court of International Trade (''CIT'') sustained the Department of Commerce's (the ''Department'') results of redetermination, pursuant to the CIT's remand order, in *Yantai Xinke Steel Structure Co., Ltd.* v. *United States,* Slip Op. 2014–38 (CIT April 9, 2014), concerning the final determination of the less-than-fair-value investigation of certain steel grating from the People's Republic of China (''PRC'').[1]

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (''CAFC'') in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (''*Timken*''), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (''*Diamond Sawblades*''), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's *Final Determination,* and it is amending the *Final Determination* with respect to Yantai Xinke Steel Structure Co., Ltd. (''Yantai Xinke''), Ningbo Haitian International Co., Ltd. (''Haitian''), and Ningbo Jiulong Machinery Co., Ltd (''Jiulong'').

DATES: *Effective Date:* April 19, 2014.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander and Thomas Martin, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0182 and (202) 482–3936.

[1] *See* Final Results of Redetermination Pursuant to Court Remand, Court No. 10–00240, dated January 18, 2013, available at: *http://enforcement.trade.gov/remands/index.html* (''*Steel Grating Final Remand*''); *Certain Steel Grating From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 32366 (June 8, 2010) (''*Final Determination*'').

SUPPLEMENTARY INFORMATION:

Background

On June 8, 2010, the Department published the *Final Determination.* Chinese exporters of steel grating from China, Yantai Xinke, Jiulong, and Haitian appealed the Department's *Final Determination* to the CIT, and on July 18, 2012, the Court remanded certain issues to the Department for reconsideration.[2] Consistent with the CIT's holding, in the *Steel Grating Final Remand,* the Department recalculated Yantai Xinke's and Haitian's weighted-average dumping margins using more contemporaneous surrogate value data, and assigned Jiulong a weighted-average dumping margin separate from that of the PRC-wide entity. The CIT subsequently affirmed the Department's *Steel Grating Final Remand* on April 9, 2014.

Timken Notice

In its decision in *Timken,* as clarified by *Diamond Sawblades,* the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (''the Act''), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's April 9, 2014, judgment sustaining the *Steel Grating Final Remand* constitutes a final decision of that court that is not in harmony with the *Final Determination.* This notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Determination

Because there is now a final court decision with respect to this litigation, the Department is amending its *Final Determination* with respect to Yantai Xinke's and Haitian's weighted-average dumping margins, and is assigning Jiulong a weighted-average dumping margin that is separate from that of the PRC-wide entity. The revised weighted-average dumping margins for the period October 1, 2008, through March 31, 2009, are as follows:

Producer	Exporter	Weighted-average dumping margin (percent)
Ningbo Haitian International Co., Ltd	Ningbo Lihong Steel Grating Co., Ltd	38.16
Yantai Xinke Steel Structure Co., Ltd	Yantai Xinke Steel Structure Co., Ltd	38.16
Ningbo Jiulong Machinery Manufacturing Co., Ltd	Ningbo Jiulong Machinery Manufacturing Co., Ltd	145.18

Cash Deposit Requirements

Since the expiration of the period of appeal has concluded, the Department will instruct United States Customs and Border Protection (''CBP'') to liquidate all entries of subject merchandise which were suspended pending a final and conclusive court decision in accordance with 19 CFR 351.212(b)(1). Since the *Final Determination,* the Department has not established a new cash deposit rate for Yantai Xinke, Haitian or Jiulong. Therefore, consistent with section 751(a)(1) of the Act, the Department will instruct CBP to collect cash deposits for entries of subject merchandise for Yantai Xinke, Haitian and Jiulong (as a party separate from the PRC-wide entity) equal to the weighted-average dumping margin listed above under ''Amended Final Determination.''

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: July 15, 2014.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2014–17577 Filed 7–24–14; 8:45 am]

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[2] *Yantai Xinke Steel Structure Co.* v. *United States,* Slip Op. 2012–95 (CIT July 18, 2012).

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Enforcement and Compliance, International Trade Administration Department of Commerce.

DATES: *Effective Date:* July 25, 2014.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave. NW., Washington, DC 20230, telephone: (202) 482–3692.

SUPPLEMENTARY INFORMATION: Section 702 of the Trade Agreements Act of 1979 (as amended) (the Act) requires the Department of Commerce (the Department) to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h) of the Act, and to publish quarterly updates to the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on articles of cheese that were imported during the periods January 1, 2014, through March 31, 2014.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies, as defined in section 702(h) of the Act, being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available. The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Ave. NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: July 16, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

APPENDIX—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN–QUOTA RATE OF DUTY

Country	Program(s)	Gross [1] subsidy ($/lb)	Net [2] subsidy ($/lb)
28 European Union Member States [3]	European Union Restitution Payments	$0.00	$0.00
Canada	Export Assistance on Certain Types of Cheese	0.38	0.38
Norway	Indirect (Milk) Subsidy	0.00	0.00
	Consumer Subsidy	0.00	0.00
	Total	0.00	0.00
Switzerland	Deficiency Payments	0.00	0.00

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).
[3] The 28 member states of the European Union are: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

[FR Doc. 2014–17571 Filed 7–24–14; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Program and National Estuarine Research Reserves

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management, National Ocean Service, Commerce

ACTION: Notice of Intent to Evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Indiana Coastal Management Program, Waquoit Bay National Estuarine Research Reserve, and Chesapeake Bay National Estuarine Research Reserve in Virginia.

The Coastal Zone Management Program evaluations will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA) and regulations at 15 CFR part 923, Subpart L. The CZMA requires continuing review of the performance of states with respect to coastal management program implementation. Evaluation of a Coastal Management Program requires findings concerning the extent to which a state has met the national objectives, adhered to its Coastal Management Program document approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The National Estuarine Research Reserve evaluation will be conducted pursuant to sections 312 and 315 of the CZMA and regulations at 15 CFR part 921, subpart E and part 923, subpart L. Evaluation of a National Estuarine Research Reserve requires findings concerning the extent to which a state has met the national objectives, adhered to its Reserve final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The evaluations will include a public meeting, consideration of written public comments and consultations with interested Federal, state, and local agencies and members of the public. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings. Notice is hereby given of the date, local time, and location of the public meeting.

DATE AND TIME: The Indiana Coastal Management Program public meeting will be held on Tuesday, September 9 at 5:00 p.m. local time at Indiana Dunes State Park, 1600 N 25 E., Chesterton, Indiana 46304.

The Waquoit Bay National Estuarine Research Reserve public meeting will be held on Wednesday, September 10 at 4:00 p.m. local time at the Reserve Visitor Center, 131 Waquoit Hwy (Rt. 28), Waquoit (E. Falmouth), MA 02536.

The Chesapeake Bay National Estuarine Research Reserve in Virginia public meeting will be held on Wednesday, September 17, at 5:00 p.m. local time at the Wilson House at 7581 Spencer Road, Glouster Point, VA 23062.

ADDRESSES: Copies of each state's most recent performance report, as well as OCRM's evaluation notification letter to the state, are available upon request from OCRM. Written comments from interested parties regarding these programs are encouraged and will be accepted until August 12, 2014 for the Indiana Coastal Management Program and Waquoit Bay National Estuarine Research Reserve and will be accepted until August 19, 2014 for the Chesapeake Bay National Estuarine Research Reserve in Virginia. Please direct written comments to Carrie Hall, Evaluator, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, or *Carrie.Hall@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Carrie Hall, Evaluator, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, (301) 563–1135, or *Carrie.Hall@noaa.gov*.

Dated: July 18, 2014.

Christopher C. Cartwright,

Associate Assistant Administrator for Management and CFO/CAO, Ocean Services and Coastal Zone Management National Oceanic and Atmospheric Administration.

[FR Doc. 2014–17539 Filed 7–24–14; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD414

Gulf of Mexico Fishery Management Council (Council); Public Meeting

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

ACTION: Notice of a public meeting (conference call).

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a meeting of its Penaeid Shrimp Workshop Group via conference call.

DATES: The meeting will convene from 10 a.m. (E.S.T.) on Wednesday, August 13, 2014.

ADDRESSES:

Meeting address: The meeting will be held via conference call; *https://www4.gotomeeting.com/register/399307127.*

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL, 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Morgan Kilgour, Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630; fax: (813) 348–1711; email: *morgan.kilgour@gulfcouncil.org*.

SUPPLEMENTARY INFORMATION: The items of discussion on the agenda are as follows:

Penaeid Shrimp Workshop agenda, Wednesday, August 13, 2014, 10 a.m. E.S.T. (9 a.m. C.S.T.)

1. Introduction to Council Charge—''To hold a workshop to evaluate the MSY and ABC control rule based benchmarks for *penaeid shrimp''*
2. Discussion of MSY and ABC Control Rule Based Benchmarks for *Penaeid Shrimp* Workshop
   a. Data inputs needed
   b. Required data and models for workshop
3. Discuss duration of in-person workshop in October and Finalize Dates
4. Other business

Adjourn

The Agenda is subject to change, and the latest version will be posted on the Council's file server, which can be accessed by going to the Council Web site at *http://www.gulfcouncil.org* and clicking on FTP Server under Quick Links. For meeting materials see folder ''Penaeid Shrimp Workshop meeting—2014–08'' on Gulf Council file server. To access the file server, the URL is *https://public.gulfcouncil.org:5001/webman/index.cgi,* or go to the Council's Web site and click on the FTP link in the lower left of the Council Web site (*http://www.gulfcouncil.org*). The username and password are both ''gulfguest''.

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 Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council Office (see **ADDRESSES**), at least 5 working 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: July 22, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–17559 Filed 7–24–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD408

Pacific 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 Pacific Fishery Management Council's (Pacific Council) ad hoc Lower Columbia River Natural Coho Workgroup (LRC Workgroup) will hold a public work session August 14, 2014 at the Pacific Council office 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, August 14, 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). The Pacific Council may provide one-way streaming of the meeting audio and presentations to broaden the potential audience. If such arrangements are made, the details will be posted on the Pacific Council Web page in advance of the session.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Burner, telephone: (503) 820–2414.

SUPPLEMENTARY INFORMATION: The primary purpose of the work session is to continue to develop reports and recommendations on the status of Lower Columbia River coho stocks, alternative harvest policies, and risk assessment. The LRC Workgroup reports and recommendations are scheduled to be presented to the Pacific Council at its September 2014 meeting in Spokane, WA.

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: July 22, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–17558 Filed 7–24–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD403

Pacific Island Fisheries; Marine Conservation Plan for the Northern Mariana Islands

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

ACTION: Notice of agency decision.

SUMMARY: NMFS announces approval of a marine conservation plan (MCP) for the Northern Mariana Islands.

DATES: This agency decision is effective from August 4, 2014, through August 3, 2017.

ADDRESSES: You may obtain a copy of the MCP, identified by NOAA–NMFS–2014–0007, from the Federal e-Rulemaking Portal, *www.regulations.gov/*

#!docketDetail;D=NOAA-NMFS-2014-0007, or from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, *www.wpcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, Sustainable Fisheries, NMFS Pacific Islands Regional Office, 808–725–5176.

SUPPLEMENTARY INFORMATION: Section 204(e) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the Secretary of State, with the concurrence of the Secretary of Commerce (Secretary) and in consultation with the Council, to negotiate and enter into a Pacific Insular Area fishery agreement (PIAFA). A PIAFA would allow foreign fishing within the U.S. Exclusive Economic Zone (EEZ) adjacent to American Samoa, Guam, or the Northern Mariana Islands with the concurrence of, and in consultation with, the Governor of the Pacific Insular Area to which the PIAFA applies. Before entering into a PIAFA, the appropriate Governor, with the concurrence of the Council, must develop a 3-year MCP providing details on uses for any funds collected by the Secretary under the PIAFA.

The Magnuson-Stevens Act requires payments received under a PIAFA to be deposited into the United States Treasury and then conveyed to the Treasury of the Pacific Insular Area for which funds were collected. In the case of violations by foreign fishing vessels in the EEZ around any Pacific Insular Area, amounts received by the Secretary attributable to fines and penalties imposed under the Magnuson-Stevens Act, including sums collected from the forfeiture and disposition or sale of property seized subject to its authority, shall be deposited into the Treasury of the Pacific Insular Area adjacent to the EEZ in which the violation occurred, after direct costs of the enforcement action are subtracted. The government may use funds deposited into the Treasury of the Pacific Insular Area for fisheries enforcement and for implementation of an MCP.

An MCP must be consistent with the Council's fishery ecosystem plans, must identify conservation and management objectives (including criteria for determining when such objectives have been met), and must prioritize planned marine conservation projects. Although no foreign fishing is being considered at this time, at its 160th meeting held June 24–27, 2014, in Honolulu, the Council reviewed and approved the MCP for the Commonwealth of the Northern Mariana Islands (CNMI) and recommended its submission to the Secretary for approval. On July 11, 2014, the Governor of the CNMI submitted the MCP to NMFS, the designee of the Secretary, for review and approval.

The CNMI MCP contains seven conservation and management objectives, listed below. Please refer to the MCP for planned projects and activities designed to meet each objective, the evaluative criteria, and priority rankings.

MCP Objectives:

1. Improve fisheries data collection and reporting.
2. Conduct resource assessment, monitoring, and research to gain a better understanding of marine resources and fisheries.
3. Conduct enforcement training and monitoring activities to promote compliance with federal and local mandates.
4. Promote responsible domestic fisheries development to provide long-term economic growth, stability, and local food production.
5. Conduct education and outreach, enhance public participation, and build local capacity.
6. Promote an ecosystem approach to fisheries management, climate change adaptation and mitigation, and regional cooperation.
7. Recognize the importance of island cultures and traditional fishing practices in managing fishery resources, and foster opportunities for participation.

This notice announces that NMFS has determined that the CNMI MCP satisfies the requirements of the Magnuson-Stevens Act and approves the MCP for the 3-year period from August 4, 2014, through August 3, 2017. This MCP supersedes the one approved for the period August 4, 2011 through August 3, 2014 (76 FR 50183, August 12, 2011).

Dated: July 21, 2014.

Emily H. Menashes,

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

[FR Doc. 2014–17537 Filed 7–24–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC588

Marine Mammals; File No. 17344

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to Samuel Wasser, Ph.D., University of Washington, Department of Biology, P.O. Box 351800, Seattle, WA 98195 to conduct research on killer whales (*Orcinus orca*).

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Courtney Smith or Jennifer Skidmore, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On April 10, 2013, notice was published in the **Federal Register** (78 FR 21347) that a request for a permit to conduct research on killer whales had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The permit authorizes research on killer whales of the endangered Eastern North Pacific Southern Resident stock in waters of Washington, including the San Juan Islands and Puget Sound. The objective of the research is to use noninvasive physiological and genetic measures to examine the impacts of the three major threats to this stock: (1) Reduced prey ability; (2) excessive exposures to environmental contaminants; and (3) disturbance from private and commercial vessel traffic. The primary research method is the collection of opportunistic fecal samples, which would be scooped from the water column and then analyzed for genetics, hormones, and contaminants. Each year, the entire population of Southern Resident killer whales (currently estimated at 80 individuals) would be approached up to six times for photo-identification and fecal sampling. Fifteen killer whales of the Eastern North Pacific transient stock may also be approached annually for the same activities. The permit would be valid for five years.

In compliance with the National Environmental Policy Act of 1969 (42

U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 21, 2014.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–17525 Filed 7–24–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD371

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Space Vehicle and Missile Launch Operations at Kodiak Launch Complex, Alaska

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

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a Letter of Authorization (LOA) has been issued to the Alaska Aerospace Corporation (AAC) to take two species of pinnipeds incidental to space vehicle and missile launch operations at the Kodiak Launch Complex (KLC) in Kodiak, Alaska.

DATES: Effective from August 1, 2014, through July 31, 2015.

ADDRESSES: The LOA and supporting documentation are available for review on the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* Documents cited in this notice may also be viewed, by appointment, during regular business hours at the following address: Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, 301–427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued. Under the MMPA, the term ''take'' means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill marine mammals.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the identified species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth in the regulations. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Regulations governing the taking of Steller sea lions (*Eumetopias jubatus*), by harassment, and harbor seals (*Phoca vitulina*) (adults by harassment and pups by injury or mortality), incidental to space vehicle and missile launch operations at the KLC, were issued on March 22, 2011 (76 FR 16311, March 23, 2011), and remain in effect until March 21, 2016. For detailed information on the action, please refer to that document. The regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during space vehicle and missile launch operations at the KLC.

Summary of Request

On July 1, 2014, NMFS received a request from the AAC for renewal of an LOA issued on July 16, 2013, authorizing the take of marine mammals incidental to a maximum of 12 space launch vehicles, long-range ballistic target missiles, and other smaller missile systems at the KLC. The AAC has complied with the measures required in 50 CFR 217.70–75, as well as the associated 2013–2014 LOA, and submitted the reports and other documentation required by the final rule and the 2013–2014 LOA.

Summary of Activity Under the 2013–2014 LOA

As described in the AAC's 2013–2014 annual report, launch activities conducted at the KLC were within the scope and amounts authorized by the 2013–2014 LOA and the levels of take remain within the scope and amounts contemplated by the final rule. Zero launches occurred at the KLC under the 2013–2014 LOA.

Planned Activities and Estimated Take for 2014–2015

In 2014–2015, the AAC expects to conduct the same type and amount of launches identified in the 2013–2014 LOA. Similarly, the authorized take will remain within the annual estimates analyzed in the final rule.

Summary of Monitoring and Reporting Under the 2013–2014 LOA

The AAC submitted their annual monitoring report within the required timeframe and the report is posted on NMFS Web site: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* NMFS has reviewed the report and it contains the information required by the 2013–2014 LOA. The AAC's monitoring activities included four quarterly aerial surveys on July 16, 2013, October 1, 2013, November 14, 2013, and January 21, 2014. The results from these surveys were typical and showed 144–955 harbor seals and no Steller sea lions.

Authorization

The AAC complied with the requirements of the 2013–2014 LOA. Based on our review of the record, NMFS has determined that the marine mammal take resulting from the 2013–2014 launch operations falls within the levels previously anticipated, analyzed, and authorized. The record supports NMFS' conclusion that the number of marine mammals taken by the 2014–2015 launch operations will have no more than a negligible impact on the affected species or stock of marine mammals and will not have an unmitigable adverse impact on the availability of these species or stocks for taking for subsistence uses. Accordingly, NMFS has issued a 1-year LOA for launch operations conducted at the KLC from August 1, 2014, through July 31, 2015.

Dated: July 22, 2014.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–17630 Filed 7–24–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD341

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Marine Reconstruction Project

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a request from the Port of Friday Harbor, WA (Port) for authorization to take marine mammals incidental to construction activities as part of a marina reconstruction project. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to the Port to incidentally take marine mammals, by Level B Harassment only, during the specified activity.

DATES: Comments and information must be received no later than August 25, 2014.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Supervisor, Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Laws@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted to the Internet at *www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of the Port's application and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the Internet at: *www.nmfs.noaa.gov/pr/permits/incidental.htm.* In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

National Environmental Policy Act (NEPA)

We are preparing an Environmental Assessment (EA) in accordance with NEPA and the regulations published by the Council on Environmental Quality and will consider comments submitted in response to this notice as part of that process. The EA will be posted at the foregoing Web site once it is finalized.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified area, the incidental, but not intentional, taking of small numbers of marine mammals, providing that certain findings are made and the necessary prescriptions are established.

The incidental taking of small numbers of marine mammals may be allowed only if NMFS (through authority delegated by the Secretary) finds that the total taking by the specified activity during the specified time period will (i) have a negligible impact on the species or stock(s) and (ii) not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). Further, the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking must be set forth.

The allowance of such incidental taking under section 101(a)(5)(A), by harassment, serious injury, death, or a combination thereof, requires that regulations be established. Subsequently, a Letter of Authorization may be issued pursuant to the prescriptions established in such regulations, providing that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations. Under section 101(a)(5)(D), NMFS may authorize such incidental taking by harassment only, for periods of not more than one year, pursuant to requirements and conditions contained within an IHA. The establishment of these prescriptions requires notice and opportunity for public comment.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: ''. . . any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

Summary of Request

On August 12, 2013, we received a request from the Port for authorization to take marine mammals incidental to pile driving and removal associated with the reconstruction of a marina at Friday Harbor, WA. The Port submitted revised versions of the request on February 28, 2014, June 4, 2014, and June 11, 2014, after which we deemed the application adequate and complete. The Port proposes to conduct in-water work that may incidentally harass marine mammals (i.e., pile driving and removal) during a portion of the in-water work window established to protect fish species. This IHA would be valid from September 1, 2014, through February 15, 2015. Please note that any general reference to pile driving in this document is intended to refer to both pile driving and removal.

The use of vibratory pile driving is expected to produce underwater sound at levels that have the potential to result in behavioral harassment of marine mammals. Species with the expected potential to be present during all or a portion of the in-water work window include the Steller sea lion (*Eumetopias jubatus monteriensis*), California sea

lion (*Zalophus californianus*), harbor seal (*Phoca vitulina richardii*), Dall's porpoise (*Phocoenoides dalli dalli*), and harbor porpoise (*Phocoena phocoena vomerina*). These species may occur year-round in the vicinity of Friday Harbor, with the exception of the Steller and California sea lions, which are generally absent during summer. The Steller sea lion is present from fall to late spring (approximately October to May), while the California sea lion is generally absent only from approximately mid-June to August.

Description of the Specified Activity

Overview

The Port has determined that reconstruction of the marina is necessary due to the increasing age of the existing structures. Repair and replacement work is necessary in order to maintain the existing purpose of the marina, which provides access, permanent and short-term moorage and berthing opportunities, and marina support facilities to commercial and recreational boaters. A vibratory hammer would be used to extract existing timber piles. Broken and damaged pilings unable to be removed with the vibratory hammer may need to be removed with a clamshell bucket. All new piles would be driven with a vibratory hammer, to the extent possible. If vibratory driving is not effective for any given pile (i.e., due to substrate conditions), piles may be installed via confined drilling. No impact pile driving is proposed for this project. The Port does not plan to operate multiple pile driving rigs concurrently.

Dates and Duration

The allowable season for in-water work, including pile driving, in the vicinity of Friday Harbor is July 16 through February 15, a window established by the Washington Department of Fish and Wildlife in coordination with NMFS and the U.S. Fish and Wildlife Service to protect salmonid fish. The proposed action would occur only during a portion of that window, from September 1, 2014, through February 15, 2015. The Port expects to require three days for pile removal and a maximum of 29 days for pile installation, for a total of 32 days during this period. Pile driving and removal may occur on any day during the specified period, only during daylight hours.

Specific Geographic Region

The Port of Friday Harbor Marina is located at Friday Harbor, WA, on the eastern shore of San Juan Island (see Figure 1–1 of the Port's application). Friday Harbor is approximately 111 km north of Seattle, WA and 52 km southeast of Victoria, BC. The Town of Friday Harbor is located directly adjacent to the marina. Please refer to the U.S. Navy's Marine Resource Assessment for the Pacific Northwest, which documents and describes the marine resources that occur in Navy operating areas of the Pacific Northwest, including Puget Sound (DoN, 2006), for additional information regarding physical and oceanographic characteristics of the region. The document is publicly available at *www.navfac.navy.mil/products_and_services/ev/products_and_services/marine_resources/marine_resource_assessments.html* (accessed June 16, 2014).

Detailed Description of Activities

The Friday Harbor Marina is an existing public marina providing water access to the adjacent Town of Friday Harbor. The marina includes approximately 500 vessel slips, of which up to 150 are available to visiting boaters. The marina, protected by a U.S. Army Corps of Engineers (USACE)-maintained floating breakwater to the north, provides both permanent and temporary vessel moorage for commercial and recreational vessels, a U.S. Customs office, fuel dock, and other amenities. The Washington State Department of Transportation (WSDOT) maintains the Friday Harbor Ferry Terminal just east of the marina.

The marina was built in the 1960s–70s and, due to increasing age of the existing structures, reconstruction work is necessary to maintain the existing purpose of the marina. The project will entail repair and replacement of portions of the existing floats, piles, and walkways. Specifically, the Port plans to replace existing dilapidated finger and main walkway floats, treated timber walers (i.e., structural beams typically mounted to floating docks), and a steel footbridge, and to repair certain existing treated timber piles and bracing and install some new floats. In addition, the Port plans to remove 95 creosote timber piles (diameters range from 12–20 inches) and replace these with 52 steel pipe piles (twenty at 16-in diameter and 32 at 24-in diameter). Only the latter portion of the specified activity (removal and installation of piles) carries the potential for incidental take of marine mammals, and is considered further in this document.

The Port plans to remove existing treated timber piles using vibratory extraction. This involves use of a vibratory hammer, which is suspended from a crane by a cable, attached to a derrick, and positioned on the top of a pile. The pile is then unseated from the sediments by engaging the hammer, creating a vibration that loosens the sediments binding the pile, and then slowly lifting up on the hammer with the aid of the crane. Once unseated, the crane will continue to raise the hammer and pull the pile from the sediment. Vibratory removal is anticipated to require approximately 10 to 15 minutes per pile. In the event that broken or damaged pilings occur and are not able to be completely removed via the vibratory hammer, a clamshell bucket may be used to direct pull the pile remnant. Removal via clamshell bucket is not expected to result in the potential for incidental take of marine mammals.

The Port plans to install new piles using a vibratory driver as well, to the extent possible. Vibratory installation of piles using the vibratory hammer operates in the same manner as vibratory extraction, except that the weight of the hammer presses the piling into the substrate as the vibration results in liquefaction of the sediment. In the event that difficult substrate conditions are encountered, piles would be installed through drilling techniques. Unlike naked drilling, this would be confined drilling within a steel casing. The steel pipe pile would be installed as far as possible using the vibratory driver. If a pile reaches refusal prior to reaching the required embedment depth, an augur would be placed within the steel pipe to augur material from within and below the pile until the desired embedment depth is reached. Because any drilling would take place within the steel casing, this technique is not expected to result in the harassment of marine mammals. Pile installation is expected to require approximately 20 to 60 minutes per pile, with two to four piles installed per day. Pile driving is therefore expected to require between 13–26 days depending on the actual production rate. No impact pile driving will occur as part of this project.

Description of Marine Mammals in the Area of the Specified Activity

There are 11 marine mammal species known to occur in the San Juan Islands region of Washington inland waters, including seven cetaceans and four pinnipeds. The harbor seal is a year-round resident in Washington waters, while the Steller sea lion and California sea lion are seasonally present. Dall's porpoises and harbor porpoises may also occur with year-round regularity in the San Juan Islands. Remaining species that could occur in the project area

include the killer whale (*Orcinus orca;* both transient and resident ecotypes), humpback whale (*Megaptera novaeangliae*), gray whale (*Eschrichtius robustus*), and minke whale (*Balaenoptera acutorostrata scammoni*); the northern elephant seal (*Mirounga angustirostris*), and the Pacific white-sided dolphin (*Lagenorhynchus obliquidens*). While these latter six species could occur in the project area, we do not believe that such occurrence is sufficiently likely to present a reasonable likelihood of take incidental to the specified activity. For more detail, please see the ''Proposed Monitoring and Reporting'' and ''Estimated Take by Incidental Harassment'' sections, later in this document.

We have reviewed the Port's detailed species descriptions, including life history information, for accuracy and completeness and refer the reader to Section 3 of the Port's application instead of reprinting the information here. Please also refer to NMFS' Web site (*www.nmfs.noaa.gov/pr/species/mammals*) for generalized species accounts and to the Navy's Marine Resource Assessment for the Pacific Northwest, which documents and describes the marine resources that occur in Navy operating areas of the Pacific Northwest, including the San Juan Islands (DoN, 2006). The document is publicly available at *www.navfac.navy.mil/products_and_services/ev/products_and_services/marine_resources/marine_resource_assessments.html* (accessed June 16, 2014).

Table 1 lists the 12 marine mammal stocks that could occur in the vicinity of Friday Harbor during the project timeframe and summarizes key information regarding stock status and abundance. Taxonomically, we follow Committee on Taxonomy (2014). Please see NMFS' Stock Assessment Reports (SAR), available at *www.nmfs.noaa.gov/pr/sars,* for more detailed accounts of these stocks' status and abundance. All stocks are addressed in the Pacific SARs (e.g., Carretta *et al.,* 2013a), with the exception of the Steller sea lion and transient killer whale, which are treated in the Alaska SARs (e.g., Allen and Angliss, 2013a).

In the species accounts provided here, we offer a brief introduction to the species and relevant stock as well as available information regarding population trends and threats, and describe any information regarding local occurrence. We first briefly describe the occurrence of those species not expected to be affected by the Port's activity before providing additional information for those species for which incidental take is expected.

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF FRIDAY HARBOR

Species	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR [3]	Annual M/SI [4]	Relative occurrence in San Juan Islands; season of occurrence
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales) Family Eschrichtiidae						
Gray whale	Eastern North Pacific	-; N	19,126 (0.071; 18,017; 2007).	558	[13] 127	Seasonal to rare; more likely winter to spring.
Family Balaenopteridae (rorquals)						
Humpback whale	California/Oregon/Washington (CA/OR/WA) [6].	E/D; Y	1,918 (0.03; 1,855; 2011)	[11] 22	≥5.5	Seasonal to rare with highest likelihood spring to fall.
Minke whale	CA/OR/WA	-; N	478 (1.36; 202; 2008)	2	0	Seasonal; more likely spring to fall.
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises) Family Delphinidae						
Pacific white-sided dolphin.	CA/OR/WA	-; N	26,930 (0.28; 21,406; 2008).	171	17.8	Rare but more likely summer and fall.
Killer whale [5]	West coast transient [6 7]	-; N	243 (n/a; 2006)	2.4	0	Likely to rare.
	Eastern North Pacific southern resident [6].	E/D; Y	85 (n/a; 2012)	0.14	0	Likely to rare.
Family Phocoenidae (porpoises)						
Harbor porpoise	Washington inland waters [8].	-; N	10,682 (0.38; 7,841; 2003).	63	≥2.2	Likely to rare.
Dall's porpoise	CA/OR/WA	-; N	42,000 (0.33; 32,106; 2008).	257	≥0.4	Likely to rare.
Order Carnivora—Superfamily Pinnipedia Family Otariidae (eared seals and sea lions)						
California sea lion	U.S.	-; N	296,750 (n/a; 153,337; 2008).	9,200	≥431	Seasonal/common; not generally present in Jul.
Steller sea lion	Eastern U.S. [6]	-; N [9]	[10] 63,160–78,198 (n/a; 57,966; 2008–11).	[12] 1,552	65.1	Seasonal; not generally present Jun–Sep.

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF FRIDAY HARBOR—Continued

Species	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR [3]	Annual M/SI [4]	Relative occurrence in San Juan Islands; season of occurrence
Family Phocidae (earless seals)						
Harbor seal	Washington inland waters [8].	-; N	14,612 (0.15; 12,844; 1999).	771	13.4	Common; Year-round resident.
Northern elephant seal	California breeding	-; N	124,000 (n/a; 74,913; 2005).	4,382	≥10.4	Likely to rare.

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For killer whales, the abundance values represent direct counts of individually identifiable animals; therefore there is only a single abundance estimate with no associated CV. For certain stocks of pinnipeds, abundance estimates are based upon observations of animals (often pups) ashore multiplied by some correction factor derived from knowledge of the species' (or similar species') life history to arrive at a best abundance estimate; therefore, there is no associated CV. In these cases, the minimum abundance may represent actual counts of all animals ashore.

[3] Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP).

[4] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, subsistence hunting, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value. All values presented here are from the draft 2013 SARs (*www.nmfs.noaa.gov/pr/sars/draft.htm*).

[5] Transient and resident killer whales are considered unnamed subspecies.

[6] Abundance estimates (and resulting PBR values) for these stocks are new values presented in the draft 2013 SARs. This information was made available for public comment and is currently under review and therefore may be revised prior to finalizing the 2013 SARs. However, we consider this information to be the best available for use in this document.

[7] The abundance estimate for this stock includes only animals from the ''inner coast'' population occurring in inside waters of southeastern Alaska, British Columbia, and Washington—excluding animals from the ''outer coast'' subpopulation, including animals from California—and therefore should be considered a minimum count. For comparison, the previous abundance estimate for this stock, including counts of animals from California that are now considered outdated, was 354.

[8] Abundance estimates for these stocks are greater than eight years old and are therefore not considered current. PBR is considered undetermined for these stocks, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimates and PBR values, as these represent the best available information for use in this document.

[9] The eastern distinct population segment of the Steller sea lion, previously listed under the ESA as threatened, was delisted on December 4, 2013 (78 FR 66140; November 4, 2013). Because this stock is not below its OSP size and the level of direct human-caused mortality does not exceed PBR, this delisting action implies that the stock is no longer designated as depleted or as a strategic stock under the MMPA.

[10] Best abundance is calculated as the product of pup counts and a factor based on the birth rate, sex and age structure, and growth rate of the population. A range is presented because the extrapolation factor varies depending on the vital rate parameter resulting in the growth rate (i.e., high fecundity or low juvenile mortality).

[11] This stock is known to spend a portion of time outside the U.S. EEZ. Therefore, only a portion of the PBR presented here is allocated for U.S. waters. U.S. PBR allocation is half the total for humpback whales (11).

[12] PBR is calculated for the U.S. portion of the stock only (excluding animals in British Columbia) and assumes that the stock is not within its OSP. If we assume that the stock is within its OSP, PBR for the U.S. portion increases to 2,069.

[13] Includes annual Russian harvest of 123 whales.

Humpback whales were common in Washington inland waters prior to commercial whaling, but few sightings had been reported since that time until approximately the past decade (Scheffer and Slipp, 1948; *www.orcanetwork.org*). Opportunistic sightings have increased, and humpback whales now appear to occur in small numbers in the Strait of Juan de Fuca and San Juan Islands but also occasionally in Puget Sound (Falcone *et al.,* 2005), and are typically observed in spring and summer (April–July). This species is still considered to have rare occurrence in inland waters (more likely in warmer months), and is not expected to be present in all areas or to remain in any given location for extended periods of time.

Gray whales generally migrate southbound past Washington in late December and January, and transit past Washington on the northbound return in March to May. Gray whales do not generally make use of Washington inland waters, but have been observed in certain portions of those waters in all months of the year, with most records occurring from March through June (Calambokidis *et al.,* 2010; *www.orcanetwork.org*) and associated with regular feeding areas. Usually fewer than twenty gray whales visit the inner marine waters of Washington and British Columbia beginning in about January, and six to ten of these are individual whales that return most years to feeding sites in northern Puget Sound. The remaining individuals occurring in any given year generally appear unfamiliar with feeding areas, often arrive emaciated, and commonly die of starvation (WDFW, 2012).

Minke whales of the California, Oregon, and Washington stock appear to establish home ranges (e.g., Washington inland waters, central California; Dorsey *et al.,* 1990), as opposed to more migratory minke whales in northern waters. Minke whales are reported in inland waters year-round, although the majority of the records are from March through November (Calambokidis and Baird, 1994), and are sighted primarily in the San Juan Islands and Strait of Juan de Fuca (*www.orcanetwork.org*). A majority of feeding observations in the San Juan Islands were over submarine slopes of moderate incline at depths of 20–100 m (Hoelzel *et al.,* 1989).

Although a single species of killer whale is currently recognized, three recognizable forms (or ecotypes) are known in the North Pacific and killer whale taxonomy is unresolved. These three ecotypes, distinguished on the basis of social and foraging behavior (among other traits), include resident, transient, and offshore animals. Both resident and transient whales may occur in Washington inland waters, and

seasonal movements tend to be correlated with prey availability.

Transient killer whales in the Pacific Northwest spend most of their time along the outer coast of British Columbia and Washington, but visit inland waters in search of harbor seals, sea lions, and other prey. Transients, which feed on marine mammals, may occur in inland waters in any month (*www.orcanetwork.org*), but several studies have shown peaks in occurrences. Stacey *et al.* (1990) found bimodal peaks in spring and fall for transients on the northeastern coast of British Columbia, while Baird and Dill (1995) found some transient groups frequenting the vicinity of harbor seal haul-out sites around southern Vancouver Island during August and September. However, not all transient groups were seasonal in these studies, and their movements appear to be unpredictable. The number of west coast transients in Washington inland waters at any one time is probably fewer than twenty individuals (Wiles, 2004), although occurrence in inland waters has increased in correlation with increasing abundance of some prey species (e.g., seals, sea lions, and porpoises) (Houghton *et al.,* in prep). In the activity area, small groups of one to five individuals are sighted intermittently throughout the year.

Southern resident killer whales, which eat fish, are most frequently seen during the spring and summer months in the San Juan Islands region, with intermittent sightings in Puget Sound. During fall and early winter, this pattern reverses, with whales seen more frequently in Puget Sound. During later winter months, residents spend more time in outer waters of the coast. The Friday Harbor Whale Museum keeps a database of verified marine mammal sightings (whale days) by location quadrants. Between 1990 and 2008, in the September to February window proposed for this project, an average of 3.2 killer whale sightings were annually reported for the project area. From 2009–2012, during the same timeframe, three reports of southern residents were recorded for Friday Harbor.

Pacific white-sided dolphins are known to enter the inshore passes of British Columbia and Washington, and have been encountered in the Strait of Juan de Fuca and the Strait of Georgia (Stacey and Baird, 1991; Norman *et al.,* 2004). Small groups have also been seen in Haro Strait off San Juan Island. Pacific white-sided dolphins are considered as occasional visitors to the inland waters region and occurrence is considered rare.

Northern elephant seal breeding sites are located on beaches and islands in California and Mexico. After their winter breeding season and annual molt cycles, individuals typically disperse northward along the Oregon and Washington coasts and may be present typically on only a seasonal basis. However, a few individuals are now found in Washington inland waters year-round. Haul-out areas for elephant seals are not as predictable as for the other species of pinnipeds with more regular occurrence. A few individuals use beaches at Protection Island (46 km south of Friday Harbor) and Smith/Minor Islands (27 km south) (Jeffries *et al.,* 2000). Typically these sites host only small numbers of animals.

Steller Sea Lion

Steller sea lions are distributed mainly around the coasts to the outer continental shelf along the North Pacific rim from northern Hokkaido, Japan through the Kuril Islands and Okhotsk Sea, Aleutian Islands and central Bering Sea, southern coast of Alaska and south to California (Loughlin *et al.,* 1984). Based on distribution, population response, and phenotypic and genotypic data, two separate stocks of Steller sea lions are recognized within U.S. waters, with the population divided into western and eastern distinct population segments (DPS) at 144° W (Cape Suckling, Alaska) (Loughlin, 1997). The eastern DPS extends from California to Alaska, including the Gulf of Alaska, and is the only stock that may occur in the project area.

According to NMFS' recent status review (NMFS, 2013), the best available information indicates that the overall abundance of eastern DPS Steller sea lions has increased for a sustained period of at least three decades while pup production has also increased significantly, especially since the mid-1990s. Johnson and Gelatt (2012; in NMFS, 2013) provided an analysis of growth trends of the entire eastern DPS from 1979–2010, indicating that the stock increased during this period at an annual rate of 4.2 percent (90% CI 3.7–4.6). Most of the overall increase occurred in the northern portion of the range (southeast Alaska and British Columbia), but pup counts in Oregon and California also increased significantly (e.g., Merrick *et al.,* 1992; Sease *et al.,* 2001; Olesiuk and Trites, 2003; Fritz *et al.*, 2008; Olesiuk, 2008; NMFS, 2008, 2013). In Washington, Pitcher *et al.* (2007) reported that Steller sea lions, presumably immature animals and non-breeding adults, regularly used four haul-outs, including two ''major'' haul-outs (>50 animals). The same study reported that the numbers of sea lions counted between 1989 and 2002 on Washington haul-outs increased significantly (average annual rate of 9.2 percent) (Pitcher *et al.,* 2007). Although the stock size has increased, its status relative to OSP size is unknown. However, the consistent long-term estimated annual rate of increase may indicate that the stock is reaching OSP size (Allen and Angliss, 2013a).

Data from 2005–10 show a total mean annual mortality rate of 5.71 (CV = 0.23) sea lions per year from observed fisheries and 11.25 reported takes per year that could not be assigned to specific fisheries, for an approximate total from all fisheries of 17 eastern Steller sea lions (Allen and Angliss, 2013a). In addition, opportunistic observations and stranding data indicate that an additional 32 animals are killed or seriously injured each year through interaction with commercial and recreational troll fisheries and by entanglement (Allen and Angliss, 2013b). The annual average take for subsistence harvest in Alaska was 11.9 individuals in 2004–08 (Allen and Angliss, 2013a). Data on community subsistence harvests is no longer being collected, and this average is retained as an estimate for current and future subsistence harvest. Sea lion deaths are also known to occur because of illegal shooting, vessel strikes, or capture in research gear and other traps, totaling 4.2 animals per year from 2007–11 (Allen and Angliss, 2013b). The total annual human-caused mortality is a minimum estimate because takes via fisheries interactions and subsistence harvest in Canada are poorly known, although are believed to be small.

The eastern stock breeds in rookeries located in southeast Alaska, British Columbia, Oregon, and California. There are no known breeding rookeries in Washington (Allen and Angliss, 2013a) but eastern stock Steller sea lions are present year-round along the outer coast of Washington, including immature animals or non-breeding adults of both sexes. In 2011, the minimum count for Steller sea lions in Washington was 1,749 (Allen and Angliss, 2013b), up from 516 in 2001 (Pitcher *et al.,* 2007). In Washington, Steller sea lions primarily occur at haul-out sites along the outer coast from the Columbia River to Cape Flattery and in inland waters sites along the Vancouver Island coastline of the Strait of Juan de Fuca (Jeffries *et al.,* 2000; Olesiuk and Trites, 2003; Olesiuk, 2008). Numbers vary seasonally in Washington waters with peak numbers present during the fall and winter months (Jeffries *et al.,* 2000). Haul-outs in the San Juan Islands

include Green Point on Speiden Island (13 km northwest of Friday Harbor), North Peapod Rock (23 km northeast of Friday Harbor), Bird Rocks (19 km southeast of Friday Harbor), and Whale Rock (11 km south of Friday Harbor) (Jeffries *et al.,* 2000).

Harbor Seal

Harbor seals inhabit coastal and estuarine waters and shoreline areas of the northern hemisphere from temperate to polar regions. The eastern North Pacific subspecies is found from Baja California north to the Aleutian Islands and into the Bering Sea. Multiple lines of evidence support the existence of geographic structure among harbor seal populations from California to Alaska (e.g., O'Corry-Crowe *et al.,* 2003; Temte, 1986; Calambokidis *et al.,* 1985; Kelly, 1981; Brown, 1988; Lamont, 1996; Burg, 1996). Harbor seals are generally non-migratory, and analysis of genetic information suggests that genetic differences increase with geographic distance (Westlake and O'Corry-Crowe, 2002). However, because stock boundaries are difficult to meaningfully draw from a biological perspective, three separate harbor seal stocks are recognized for management purposes along the west coast of the continental U.S.: (1) Inland waters of Washington (including Hood Canal, Puget Sound, and the Strait of Juan de Fuca out to Cape Flattery), (2) outer coast of Oregon and Washington, and (3) California (Carretta *et al.,* 2013a). Multiple stocks are recognized in Alaska. Samples from Washington, Oregon, and California demonstrate a high level of genetic diversity and indicate that the harbor seals of Washington inland waters possess unique haplotypes not found in seals from the coasts of Washington, Oregon, and California (Lamont *et al.,* 1996). Only the Washington inland waters stock may be found in the project area.

Recent genetic evidence suggests that harbor seals of Washington inland waters may have sufficient population structure to warrant division into multiple distinct stocks (Huber *et al.,* 2010, 2012). Based on studies of pupping phenology, mitochondrial DNA, and microsatellite variation, Carretta *et al.* (2013b) suggest division of the Washington inland waters stock into three new populations, and present these as prospective stocks: (1) Southern Puget Sound (south of the Tacoma Narrows Bridge); (2) Washington northern inland waters (including Puget Sound north of the Tacoma Narrows Bridge, the San Juan Islands, and the Strait of Juan de Fuca); and (3) Hood Canal. Until this stock structure is accepted, we consider a single Washington inland waters stock.

The best available abundance estimate was derived from aerial surveys of harbor seals in Washington conducted during the pupping season in 1999, during which time the total numbers of hauled-out seals (including pups) were counted (Jeffries *et al.,* 2003). Radio-tagging studies conducted at six locations collected information on harbor seal haul-out patterns in 1991–92, resulting in a pooled correction factor (across three coastal and three inland sites) of 1.53 to account for animals in the water which are missed during the aerial surveys (Huber *et al.,* 2001), which, coupled with the aerial survey counts, provides the abundance estimate (see Table 1).

Harbor seal counts in Washington State increased at an annual rate of six percent from 1983–96, increasing to ten percent for the period 1991–96 (Jeffries *et al.,* 1997). The population is thought to be stable, and the Washington inland waters stock is considered to be within its OSP size (Jeffries *et al.,* 2003).

Data from 2007–11 indicate that a minimum of four harbor seals are killed annually in Washington inland waters commercial fisheries, while mean annual mortality for recreational fisheries is one seal (Carretta *et al.,* 2013b). Animals captured east of Cape Flattery are assumed to belong to this stock. The estimate is considered a minimum because there are likely additional animals killed in unobserved fisheries and because not all animals stranding as a result of fisheries interactions are likely to be recorded. Another 8.4 harbor seals per year are estimated to be killed as a result of various non-fisheries human interactions (Carretta *et al.,* 2013b). Tribal subsistence takes of this stock may occur, but no data on recent takes are available.

The nearest known haul-out sites to Friday Harbor are the intertidal rocks northeast of Point George on Shaw Island (approximately 4–5 km northeast of Friday Harbor; see Figure 1–3 of the Port's application). The level of use during the project timeframe is unknown, but would be expected to be less as air temperatures become colder than water temperatures in the fall and winter.

California Sea Lion

California sea lions range from the Gulf of California north to the Gulf of Alaska, with breeding areas located in the Gulf of California, western Baja California, and southern California. Five genetically distinct geographic populations have been identified: (1) Pacific temperate, (2) Pacific subtropical, and (3–5) southern, central, and northern Gulf of California (Schramm *et al.,* 2009). Rookeries for the Pacific temperate population are found within U.S. waters and just south of the U.S.-Mexico border, and animals belonging to this population may be found from the Gulf of Alaska to Mexican waters off Baja California. For management purposes, a stock of California sea lions comprising those animals at rookeries within the U.S. is defined (i.e., the U.S. stock of California sea lions) (Carretta *et al.,* 2013a). Pup production at the Coronado Islands rookery in Mexican waters is considered an insignificant contribution to the overall size of the Pacific temperate population (Lowry and Maravilla-Chavez, 2005).

Trends in pup counts from 1975 through 2008 have been assessed for four rookeries in southern California and for haul-outs in central and northern California. During this time period counts of pups increased at an annual rate of 5.4 percent, excluding six El Nino years when pup production declined dramatically before quickly rebounding (Carretta *et al.,* 2013a). The maximum population growth rate was 9.2 percent when pup counts from the El Niño years were removed. There are indications that the California sea lion may have reached or is approaching carrying capacity, although more data are needed to confirm that leveling in growth persists (Carretta *et al.,* 2013a).

Data from 2003–09 indicate that a minimum of 337 (CV = 0.56) California sea lions are killed annually in commercial fisheries. In addition, a summary of stranding database records for 2005–09 shows an annual average of 65 such events, which is likely a gross underestimate because most carcasses are not recovered. California sea lions may also be removed because of predation on endangered salmonids (seventeen per year, 2008–10) or incidentally captured during scientific research (three per year, 2005–09) (Carretta *et al.,* 2013a). Sea lion mortality has also been linked to the algal-produced neurotoxin domoic acid (Scholin *et al.,* 2000). Future mortality may be expected to occur, due to the sporadic occurrence of such harmful algal blooms. There is currently an Unusual Mortality Event (UME) declaration in effect for California sea lions. Beginning in January 2013, elevated strandings of California sea lion pups have been observed in southern California, with live sea lion strandings nearly three times higher than the historical average. Findings to date indicate that a likely contributor to

the large number of stranded, malnourished pups was a change in the availability of sea lion prey for nursing mothers, especially sardines. The causes and mechanisms of this UME remain under investigation (*www.nmfs.noaa.gov/pr/health/mmume/californiasealions2013.htm;* accessed May 8, 2014).

An estimated 3,000 to 5,000 California sea lions migrate northward along the coast to central and northern California, Oregon, Washington, and Vancouver Island during the non-breeding season from September to May (Jeffries *et al.,* 2000) and return south the following spring (Mate, 1975; Bonnell *et al.,* 1983). Peak numbers of up to 1,000 California sea lions occur in Puget Sound during this time period (Jeffries *et al.,* 2000). The nearest documented California sea lion haul-out sites to Friday Harbor are intertidal rocks and reef areas around Trial Island and Race Rocks near Victoria, B.C. (approximately 24 km west of Friday Harbor). Small numbers of sea lions may occasionally haul-out on navigation buoys in the San Juan Islands (Jeffries *et al.,* 2000).

Harbor Porpoise

Harbor porpoises are found primarily in inshore and relatively shallow coastal waters (< 100 m) from Point Barrow (Alaska) to Point Conception (California). Various genetic analyses and investigation of pollutant loads indicate a low mixing rate for harbor porpoises along the west coast of North America and likely fine-scale geographic structure along an almost continuous distribution from California to Alaska (e.g., Calambokidis and Barlow, 1991; Osmek *et al.,* 1994; Chivers *et al.,* 2002, 2007). However, stock boundaries are difficult to draw because any rigid line is generally arbitrary from a biological perspective. On the basis of genetic data and density discontinuities identified from aerial surveys, eight stocks have been identified in the eastern North Pacific, including northern Oregon/Washington coastal and inland Washington stocks (Carretta *et al.,* 2013a). The Washington inland waters stock includes individuals found east of Cape Flattery and is the only stock that may occur in the project area.

Although long-term harbor porpoise sightings in southern Puget Sound declined from the 1940s through the 1990s, sightings and strandings have increased in Puget Sound in recent years and harbor porpoise are now considered to regularly occur year-round in these waters (Carretta *et al.,* 2013a). Reasons for the apparent decline, as well as the apparent rebound, are unknown. Recent observations may represent a return to historical conditions, when harbor porpoises were considered one of the most common cetaceans in Puget Sound (Scheffer and Slipp, 1948). The status of harbor porpoises in Washington inland waters relative to OSP is not known (Carretta *et al.,* 2013a).

Data from 2005–09 indicate that a minimum of 2.2 Washington inland waters harbor porpoises are killed annually in U.S. commercial fisheries (Carretta *et al.,* 2013a). Animals captured in waters east of Cape Flattery are assumed to belong to this stock. This estimate is considered a minimum because the Washington Puget Sound Region salmon set/drift gillnet fishery has not been observed since 1994, and because of a lack of knowledge about the extent to which harbor porpoise from U.S. waters frequent the waters of British Columbia and are, therefore, subject to fishery-related mortality. However, harbor porpoise takes in the salmon drift gillnet fishery are unlikely to have increased since the fishery was last observed, when few interactions were recorded, due to reductions in the number of participating vessels and available fishing time. Fishing effort and catch have declined throughout all salmon fisheries in the region due to management efforts to recover ESA-listed salmonids (Carretta *et al.,* 2013a). In addition, an estimated 0.4 animals per year are killed by non-fishery human causes (e.g., ship strike, entanglement). In 2006, a UME was declared for harbor porpoises throughout Oregon and Washington, and a total of 114 strandings were reported in 2006–07. The cause of the UME has not been determined and several factors, including contaminants, genetics, and environmental conditions, are still being investigated (Carretta *et al.,* 2013a).

Harbor porpoises occur year-round and breed in the waters around the San Juan Archipelago and north into Canadian waters (Calambokidis and Baird, 1994). Little information exists on harbor porpoise occurrence in the project area, although it is suspected that in some areas harbor porpoises migrate seasonally.

Dall's Porpoise

Dall's porpoises are endemic to temperate waters of the North Pacific, typically in deeper waters between 30–62° N, and are found from northern Baja California to the northern Bering Sea. Stock structure for Dall's porpoises is not well known; because there are no cooperative management agreements with Mexico or Canada for fisheries which may take this species, Dall's porpoises are divided for management purposes into two discrete, noncontiguous areas: (1) Waters off California, Oregon, and Washington, and (2) Alaskan waters (Carretta *et al.,* 2013a). Only individuals from the CA/OR/WA stock may occur within the project area.

Data from 2002–08, from all fisheries for which mortality data are available, indicate that a minimum of 0.4 animals are killed per year (Carretta *et al.,* 2013a). Species-specific information is not available for Mexican fisheries, which could be an additional source of mortality for animals beyond the stock boundaries delineated for management purposes. No other sources of human-caused mortality are known.

Dall's porpoise distribution on the U.S. west coast is highly variable between years and appears to be affected by oceanographic conditions (Forney and Barlow, 1998); animals may spend more or less time outside of U.S. waters as oceanographic conditions change. Because distribution and abundance of this stock is so variable, population trends are not available (Carretta *et al.,* 2013a). In Washington, Dall's porpoises are most abundant in offshore waters where they are year-round residents, although interannual distribution is highly variable (Green *et al.,* 1992). In inland waters, Dall's porpoises are most frequently observed in the Strait of Juan de Fuca and Haro Strait between San Juan Island and Vancouver Island (Nysewander *et al.,* 2005).

Potential Effects of the Specified Activity on Marine Mammals

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals. This discussion also includes reactions that we consider to rise to the level of a take and those that we do not consider to rise to the level of a take (for example, with acoustics, we may include a discussion of studies that showed animals not reacting at all to sound or exhibiting barely measurable avoidance). This section is intended as a background of potential effects and does not consider either the specific manner in which this activity will be carried out or the mitigation that will be implemented, and how either of those will shape the anticipated impacts from this specific activity. The ''Estimated Take by Incidental Harassment'' section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The ''Negligible Impact

Analysis'' section will include the analysis of how this specific activity will impact marine mammals and will consider the content of this section, the ''Estimated Take by Incidental Harassment'' section, the ''Proposed Mitigation'' section, and the ''Anticipated Effects on Marine Mammal Habitat'' section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks. In the following discussion, we provide general background information on sound and marine mammal hearing before considering potential effects to marine mammals from sound produced by vibratory pile driving.

Description of Sound Sources

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks of a sound wave; lower frequency sounds have longer wavelengths than higher frequency sounds and attenuate (decrease) more rapidly in shallower water. Amplitude is the height of the sound pressure wave or the 'loudness' of a sound and is typically measured using the decibel (dB) scale. A dB is the ratio between a measured pressure (with sound) and a reference pressure (sound at a constant pressure, established by scientific standards). It is a logarithmic unit that accounts for large variations in amplitude; therefore, relatively small changes in dB ratings correspond to large changes in sound pressure. When referring to sound pressure levels (SPLs; the sound force per unit area), sound is referenced in the context of underwater sound pressure to 1 microPascal (μPa). One pascal is the pressure resulting from a force of one newton exerted over an area of one square meter. The source level (SL) represents the sound level at a distance of 1 m from the source (referenced to 1 μPa). The received level is the sound level at the listener's position. Note that all underwater sound levels in this document are referenced to a pressure of 1 μPa and all airborne sound levels in this document are referenced to a pressure of 20 μPa.

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Rms is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Rms accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in all directions away from the source (similar to ripples on the surface of a pond), except in cases where the source is directional. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (e.g., waves, earthquakes, ice, atmospheric sound), biological (e.g., sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (e.g., vessels, dredging, aircraft, construction). A number of sources contribute to ambient sound, including the following (Richardson *et al.,* 1995):

- *Wind and waves:* The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient noise for frequencies between 200 Hz and 50 kHz (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf noise becomes important near shore, with measurements collected at a distance of 8.5 km from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions.
- *Precipitation:* Sound from rain and hail impacting the water surface can become an important component of total noise at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times.
- *Biological:* Marine mammals can contribute significantly to ambient noise levels, as can some fish and shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz.
- *Anthropogenic:* Sources of ambient noise related to human activity include transportation (surface vessels and aircraft), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Shipping noise typically dominates the total ambient noise for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly (Richardson *et al.,* 1995). Sound from identifiable anthropogenic sources other than the activity of interest (e.g., a passing vessel) is sometimes termed background sound, as opposed to ambient sound.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

The only known available in-water background noise data in the San Juan Islands area was collected on the west side of San Juan Island (approximately 10 km west of Friday Harbor), as part of the Orcasound in-water monitoring study. Data were collected between April 2004 and November 2005, with average daytime in-water noise levels during the summer (July–Aug) and non-summer (Oct–Apr) measured at 118 and 116 dB rms, respectively (Veirs and Veirs, 2005). Known sound levels and frequency ranges associated with anthropogenic sources similar to those that would be used for this project are summarized in Table 2. Details of the source types are described in the following text.

TABLE 2—REPRESENTATIVE SOUND LEVELS OF ANTHROPOGENIC SOURCES

Sound source	Frequency range (Hz)	Underwater sound level	Reference
Small vessels	250–1,000	151 dB rms at 1 m	Richardson *et al.,* 1995.
Tug docking gravel barge	200–1,000	149 dB rms at 100 m	Blackwell and Greene, 2002.
Vibratory driving of 72-in steel pipe pile	10–1,500	180 dB rms at 10 m	Reyff, 2007.
Impact driving of 36-in steel pipe pile	10–1,500	195 dB rms at 10 m	Laughlin, 2007.
Impact driving of 66-in cast-in-steel-shell (CISS) pile.	10–1,500	195 dB rms at 10 m	Reviewed in Hastings and Popper, 2005.

In-water construction activities associated with the project would include vibratory pile driving and removal. The sounds produced by these activities fall into the latter of two general sound types: Impulse and continuous (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (e.g., Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.,* (2007) for an in-depth discussion of these concepts.

Pulsed sound sources (e.g., explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986; Harris, 1998; NIOSH, 1998; ISO, 2003; ANSI, 2005) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (e.g., rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems (such as those used by the U.S. Navy). The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak SPLs may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.,* 2005).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals. To appropriately assess potential effects, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (e.g., Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on measured or estimated hearing ranges on the basis of available behavioral data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. The lower and/or upper frequencies for some of these functional hearing groups have been modified from those designated by Southall *et al.* (2007). The functional groups and the associated frequencies are indicated below (note that these frequency ranges do not necessarily correspond to the range of best hearing, which varies by species):

- *Low-frequency cetaceans (mysticetes):* Functional hearing is estimated to occur between approximately 7 Hz and 30 kHz (extended from 22 kHz; Watkins, 1986; Au *et al.,* 2006; Lucifredi and Stein, 2007; Ketten and Mountain, 2009; Tubelli *et al.,* 2012);
- *Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids):* Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- *High-frequency cetaceans (porpoises, river dolphins, and members of the genera Kogia and Cephalorhynchus; now considered to include two members of the genus Lagenorhynchus on the basis of recent echolocation data and genetic data [May-Collado and Agnarsson, 2006; Kyhn et al. 2009, 2010; Tougaard et al. 2010]):* Functional hearing is estimated to occur between approximately 200 Hz and 180 kHz; and
- *Pinnipeds in water:* functional hearing is estimated to occur between approximately 75 Hz to 100 kHz for Phocidae (true seals) and between 100 Hz and 40 kHz for Otariidae (eared seals), with the greatest sensitivity between approximately 700 Hz and 20 kHz. The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth *et al.,* 2013).

There are five marine mammal species (two cetacean and three pinniped [two otariid and one phocid] species) with expected potential to co-occur with Port construction activities. Please refer to Table 1. The two cetacean species that may be present are classified as high-frequency.

Acoustic Effects, Underwater

Potential Effects of Pile Driving Sound—The effects of sounds from pile driving might result in one or more of the following: temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007). The effects of pile driving on marine mammals are dependent on several factors, including the size, type, and depth of the animal; the depth, intensity, and duration of the pile driving sound; the depth of the water column; the substrate of the habitat; the standoff distance between the pile and

the animal; and the sound propagation properties of the environment. Impacts to marine mammals from pile driving activities are expected to result primarily from acoustic pathways. As such, the degree of effect is intrinsically related to the received level and duration of the sound exposure, which are in turn influenced by the distance between the animal and the source. The further away from the source, the less intense the exposure should be. The substrate and depth of the habitat affect the sound propagation properties of the environment. Shallow environments are typically more structurally complex, which leads to rapid sound attenuation. In addition, substrates that are soft (e.g., sand) would absorb or attenuate the sound more readily than hard substrates (e.g., rock) which may reflect the acoustic wave. Soft porous substrates would also likely require less time to drive the pile, and possibly less forceful equipment, which would ultimately decrease the intensity of the acoustic source.

In the absence of mitigation, impacts to marine species would be expected to result from physiological and behavioral responses to both the type and strength of the acoustic signature (Viada *et al.,* 2008). The type and severity of behavioral impacts are more difficult to define due to limited studies addressing the behavioral effects of impulsive sounds on marine mammals. Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973).

Hearing Impairment and Other Physical Effects—Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.,* 1999; Schlundt *et al.,* 2000; Finneran *et al.,* 2002, 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Marine mammals depend on acoustic cues for vital biological functions, (e.g., orientation, communication, finding prey, avoiding predators); thus, TTS may result in reduced fitness in survival and reproduction. However, this depends on the frequency and duration of TTS, as well as the biological context in which it occurs. TTS of limited duration, occurring in a frequency range that does not coincide with that used for recognition of important acoustic cues, would have little to no effect on an animal's fitness. Repeated sound exposure that leads to TTS could cause PTS. PTS constitutes injury, but TTS does not (Southall *et al.,* 2007). The following subsections discuss in somewhat more detail the possibilities of TTS, PTS, and non-auditory physical effects.

Temporary Threshold Shift—TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be stronger in order to be heard. In terrestrial mammals, TTS can last from minutes or hours to days (in cases of strong TTS). For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound. Available data on TTS in marine mammals are summarized in Southall *et al.* (2007).

Given the available data, the received level of a single pulse (with no frequency weighting) might need to be approximately 186 dB re 1 μPa^2-s (i.e., 186 dB sound exposure level [SEL] or approximately 221–226 dB p-p [peak]) in order to produce brief, mild TTS. Exposure to several strong pulses that each have received levels near 190 dB rms (175–180 dB SEL) might result in cumulative exposure of approximately 186 dB SEL and thus slight TTS in a small odontocete, assuming the TTS threshold is (to a first approximation) a function of the total received pulse energy.

The above TTS information for odontocetes is derived from studies on the bottlenose dolphin (*Tursiops truncatus*) and beluga whale (*Delphinapterus leucas*). There is no published TTS information for other species of cetaceans. However, preliminary evidence from a harbor porpoise exposed to pulsed sound suggests that its TTS threshold may have been lower (Lucke *et al.,* 2009). As summarized above, data that are now available imply that TTS is unlikely to occur unless odontocetes are exposed to pile driving pulses stronger than 180 dB re 1 μPa rms.

Permanent Threshold Shift—When PTS occurs, there is physical damage to the sound receptors in the ear. In severe cases, there can be total or partial deafness, while in other cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985). There is no specific evidence that exposure to pulses of sound can cause PTS in any marine mammal. However, given the possibility that mammals close to a sound source can incur TTS, it is possible that some individuals might incur PTS. Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage, but repeated or (in some cases) single exposures to a level well above that causing TTS onset might elicit PTS.

Relationships between TTS and PTS thresholds have not been studied in marine mammals but are assumed to be similar to those in humans and other terrestrial mammals, based on anatomical similarities. PTS might occur at a received sound level at least several decibels above that inducing mild TTS if the animal were exposed to strong sound pulses with rapid rise time. Based on data from terrestrial mammals, a precautionary assumption is that the PTS threshold for impulse sounds (such as pile driving pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis and probably greater than 6 dB (Southall *et al.,* 2007). On an SEL basis, Southall *et al.* (2007) estimated that received levels would need to exceed the TTS threshold by at least 15 dB for there to be risk of PTS. Thus, for cetaceans, Southall *et al.* (2007) estimate that the PTS threshold might be an M-weighted SEL (for the sequence of received pulses) of approximately 198 dB re 1 μPa^2-s (15 dB higher than the TTS threshold for an impulse). Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

Measured source levels from impact pile driving can be as high as 214 dB rms. Although no marine mammals have been shown to experience TTS or PTS as a result of being exposed to pile driving activities, captive bottlenose dolphins and beluga whales exhibited changes in behavior when exposed to strong pulsed sounds (Finneran *et al.,* 2000, 2002, 2005). The animals tolerated high received levels of sound before exhibiting aversive behaviors. Experiments on a beluga whale showed that exposure to a single watergun impulse at a received level of 207 kPa (30 psi) p-p, which is equivalent to 228 dB p-p, resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within four minutes of the exposure (Finneran *et al.,* 2002). Although the source level of pile driving from one

hammer strike is expected to be much lower than the single watergun impulse cited here, animals being exposed for a prolonged period to repeated hammer strikes could receive more sound exposure in terms of SEL than from the single watergun impulse (estimated at 188 dB re 1 μPa²-s) in the aforementioned experiment (Finneran *et al.,* 2002). However, in order for marine mammals to experience TTS or PTS, the animals have to be close enough to be exposed to high intensity sound levels for a prolonged period of time. Based on the best scientific information available, these SPLs are far below the thresholds that could cause TTS or the onset of PTS.

Non-auditory Physiological Effects—Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007). Studies examining such effects are limited. In general, little is known about the potential for pile driving to cause auditory impairment or other physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would presumably be limited to short distances from the sound source and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of pile driving, including some odontocetes and some pinnipeds, are especially unlikely to incur auditory impairment or non-auditory physical effects.

Disturbance Reactions

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous changes in activities, and displacement. Behavioral responses to sound are highly variable and context-specific and reactions, if any, depend on species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day, and many other factors (Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007).

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. Behavioral state may affect the type of response as well. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003).

Controlled experiments with captive marine mammals showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic guns or acoustic harassment devices, but also including pile driving) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; Thorson and Reyff, 2006; see also Gordon *et al.,* 2004; Wartzok *et al.,* 2003; Nowacek *et al.,* 2007). Responses to continuous sound, such as vibratory pile installation, have not been documented as well as responses to pulsed sounds.

With both types of pile driving, it is likely that the onset of pile driving could result in temporary, short term changes in an animal's typical behavior and/or avoidance of the affected area. These behavioral changes may include (Richardson *et al.,* 1995): changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located; and/or flight responses (e.g., pinnipeds flushing into water from haul-outs or rookeries). Pinnipeds may increase their haul-out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, or reproduction. Significant behavioral modifications that could potentially lead to effects on growth, survival, or reproduction include:

- Drastic changes in diving/surfacing patterns (such as those thought to cause beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cessation of feeding or social interaction.

The onset of behavioral disturbance from anthropogenic sound depends on both external factors (characteristics of sound sources and their paths) and the specific characteristics of the receiving animals (hearing, motivation, experience, demography) and is difficult to predict (Southall *et al.,* 2007).

Auditory Masking

Natural and artificial sounds can disrupt behavior by masking, or interfering with, a marine mammal's ability to hear other sounds. Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher levels. Chronic exposure to excessive, though not high-intensity, sound could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions. Masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction. If the coincident (masking) sound were anthropogenic, it could be potentially harassing if it disrupted hearing-related behavior. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs only during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. Because sound generated from in-water pile driving is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds made by porpoises. However, lower frequency man-made sounds are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey sound. It may also affect communication signals

when they occur near the sound band and thus reduce the communication space of animals (e.g., Clark *et al.,* 2009) and cause increased stress levels (e.g., Foote *et al.,* 2004; Holt *et al.,* 2009).

Masking has the potential to impact species at the population or community levels as well as at individual levels. Masking affects both senders and receivers of the signals and can potentially have long-term chronic effects on marine mammal species and populations. Recent research suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, and that most of these increases are from distant shipping (Hildebrand, 2009). All anthropogenic sound sources, such as those from vessel traffic, pile driving, and dredging activities, contribute to the elevated ambient sound levels, thus intensifying masking.

Vibratory pile driving is relatively short-term, with rapid oscillations occurring for approximately sixty minutes per installed pile. It is possible that vibratory pile driving resulting from this proposed action may mask acoustic signals important to the behavior and survival of marine mammal species, but the short-term duration and limited affected area would result in insignificant impacts from masking. Any masking event that could possibly rise to Level B harassment under the MMPA would occur concurrently within the zones of behavioral harassment already estimated for vibratory pile driving, and which have already been taken into account in the exposure analysis.

Acoustic Effects, Airborne

Marine mammals that occur in the project area could be exposed to airborne sounds associated with pile driving that have the potential to cause harassment, depending on their distance from pile driving activities. Airborne pile driving sound would have less impact on cetaceans than pinnipeds because sound from atmospheric sources does not transmit well underwater (Richardson *et al.,* 1995); thus, airborne sound would only be an issue for pinnipeds either hauled-out or looking with heads above water in the project area. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon their habitat and move further from the source. Studies by Blackwell *et al.* (2004) and Moulton *et al.* (2005) indicate a tolerance or lack of response to unweighted airborne sounds as high as 112 dB peak and 96 dB rms.

Anticipated Effects on Habitat

The proposed activities at Friday Harbor would not result in permanent impacts to habitats used directly by marine mammals, such as haul-out sites, and is unlikely to have even short-term impacts to food sources such as forage fish as impact driving is not proposed for this project. There are no rookeries or major haul-out sites nearby (there are rocks used by harbor seals as haul-outs within the acoustic zone of influence, approximately 5 km from the project site) or ocean bottom structure of significant biological importance to marine mammals that may be present in the marine waters in the vicinity of the project area. Therefore, the main impact associated with the proposed activity would be temporarily elevated sound levels and the associated direct effects on marine mammals, as discussed previously in this document. The most likely impact to marine mammal habitat occurs from minor impacts to the immediate substrate during installation and removal of piles during the project.

Potential Pile Driving Effects on Prey

Construction activities would produce continuous (i.e., vibratory pile driving) sounds. Fish react to sounds which are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (e.g., Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Sound pulses at received levels of 160 dB may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.,* 1992; Skalski *et al.,* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality. The most likely impact to fish from pile driving activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the project and lack of impact pile driving.

Pile Driving Effects on Potential Foraging Habitat

The area likely impacted by the project is relatively small compared to the available habitat in the San Juan Islands. Avoidance by potential prey (i.e., fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity.

In summary, given the short daily duration of sound associated with individual pile driving events, the relatively small areas being affected, and the absence of impact pile driving, pile driving activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Thus, any impacts to marine mammal habitat are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, ''and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking'' for certain subsistence uses.

Measurements from similar pile driving events were coupled with practical spreading loss to estimate zones of influence (ZOI; see ''Estimated Take by Incidental Harassment''). ZOIs are often used to establish a mitigation zone around each pile to prevent Level A harassment to marine mammals, and also provide estimates of the areas within which Level B harassment might occur. ZOIs may vary between different diameter piles and types of installation methods. In addition to the measures described later in this section, the Port would employ the following standard mitigation measures:

(a) Conduct briefings between construction supervisors and crews, marine mammal monitoring team, and Port staff prior to the start of all pile

driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

(b) For in-water heavy machinery work other than pile driving (using, e.g., standard barges, tug boats, barge-mounted excavators, or clamshell equipment used to place or remove material), if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) Movement of the barge to the pile location; (2) positioning of the pile on the substrate via a crane (i.e., stabbing the pile); or (3) removal of the pile from the water column/substrate via a crane (i.e., deadpull). For these activities, monitoring would take place from 15 minutes prior to initiation until the action is complete.

Monitoring and Shutdown for Pile Driving

The following measures would apply to the Port's mitigation through shutdown and disturbance zones:

Shutdown Zone—For all pile driving activities, the Port will establish a shutdown zone. Shutdown zones are intended to contain the area in which SPLs equal or exceed the 180/190 dB rms acoustic injury criteria, with the purpose being to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area), thus preventing injury of marine mammals. However, the Port's activities are not expected to produce sound at or above the 180 dB rms injury criterion (see ''Estimated Take by Incidental Harassment''). The Port would, however, implement a minimum shutdown zone of 10 m radius for all marine mammals around all pile driving and removal activity. These precautionary measures are intended to further reduce the unlikely possibility of injury from direct physical interaction with construction operations.

Disturbance Zone—Disturbance zones are the areas in which SPLs equal or exceed 120 dB rms (for continuous sound) for pile driving installation and removal. Disturbance zones provide utility for monitoring conducted for mitigation purposes (i.e., shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area but outside the shutdown zone and thus prepare for potential shutdowns of activity. However, the primary purpose of disturbance zone monitoring is for documenting incidents of Level B harassment; disturbance zone monitoring is discussed in greater detail later (see ''Proposed Monitoring and Reporting''). Nominal radial distances for disturbance zones are shown in Table 3. Given the size of the disturbance zone for vibratory pile driving, it is impossible to guarantee that all animals would be observed or to make comprehensive observations of fine-scale behavioral reactions to sound. We discuss monitoring objectives and protocols in greater depth in ''Proposed Monitoring and Reporting.''

In order to document observed incidents of harassment, monitors record all marine mammal observations, regardless of location. The observer's location, as well as the location of the pile being driven, is known from a GPS. The location of the animal is estimated as a distance from the observer, which is then compared to the location from the pile and the estimated ZOIs for relevant activities (i.e., pile installation and removal). This information may then be used to extrapolate observed takes to reach an approximate understanding of actual total takes.

Monitoring Protocols—Monitoring would be conducted before, during, and after pile driving and removal activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven. Observations made outside the shutdown zone will not result in shutdown; that pile segment would be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities would be halted. Monitoring will take place from fifteen minutes prior to initiation through thirty minutes post-completion of pile driving activities. Pile driving activities include the time to remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes. Please see the Marine Mammal Monitoring Plan (available at *www.nmfs.noaa.gov/pr/permits/incidental.htm*), developed by the Port with our approval, for full details of the monitoring protocols.

The following additional measures apply to visual monitoring:

(1) Monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Qualified observers are trained biologists, with the following minimum qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Advanced education in biological science or related field (undergraduate degree or higher required);
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

(2) Prior to the start of pile driving activity, the shutdown zone will be monitored for fifteen minutes to ensure that it is clear of marine mammals. Pile driving will only commence once observers have declared the shutdown zone clear of marine mammals; animals will be allowed to remain in the shutdown zone (i.e., must leave of their own volition) and their behavior will be monitored and documented. The shutdown zone may only be declared clear, and pile driving started, when the entire shutdown zone is visible (i.e., when not obscured by dark, rain, fog, etc.). In addition, if such conditions should arise during impact pile driving that is already underway, the activity would be halted.

(3) If a marine mammal approaches or enters the shutdown zone during the course of pile driving operations,

activity will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or fifteen minutes have passed without re-detection of the animal. Monitoring will be conducted throughout the time required to drive a pile.

Timing Restrictions

In the San Juan Islands, designated timing restrictions exist for pile driving activities to avoid in-water work when salmonids are likely to be present. The in-water work window is July 16–February 15, although work will not begin prior to September 1. In-water construction activities will occur during daylight hours (sunrise to sunset).

Soft Start

The use of a soft-start procedure is believed to provide additional protection to marine mammals by warning or providing a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from vibratory hammers for fifteen seconds at reduced energy followed by a thirty-second waiting period. This procedure is repeated two additional times.

We have carefully evaluated the Port's proposed mitigation measures and considered their effectiveness in past implementation to preliminarily determine whether they are likely to effect the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals, (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation.

Any mitigation measure(s) we prescribe should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

(2) A reduction in the number (total number or number at biologically important time or location) of individual marine mammals exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(3) A reduction in the number (total number or number at biologically important time or location) of times any individual marine mammal would be exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(4) A reduction in the intensity of exposure to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing the severity of behavioral harassment only).

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying particular attention to the prey base, blockage or limitation of passage to or from biologically important areas, permanent destruction of habitat, or temporary disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation, an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the Port's proposed measures, including information from monitoring of implementation of mitigation measures very similar to those described here under previous IHAs for other similar projects in Washington inland waters, including work conducted at Friday Harbor by the Washington State Department of Transportation, we have preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Any monitoring requirement we prescribe should improve our understanding of one or more of the following:

- Occurrence of marine mammal species in action area (e.g., presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (e.g., source characterization, propagation, ambient noise); (2) Affected species (e.g., life history, dive patterns); (3) Co-occurrence of marine mammal species with the action; or (4) Biological or behavioral context of exposure (e.g., age, calving or feeding areas).
- Individual responses to acute stressors, or impacts of chronic exposures (behavioral or physiological).
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of an individual; or (2) Population, species, or stock.
- Effects on marine mammal habitat and resultant impacts to marine mammals.
- Mitigation and monitoring effectiveness.

The Port submitted a marine mammal monitoring plan as part of the IHA application for this project, which can be found on the Internet at *www.nmfs.noaa.gov/pr/permits/incidental.htm.* Although this plan was initially developed as part of the ESA consultation process (with NMFS' West Coast Regional Office) to enable the Port to cease activities in the event that ESA-listed species occur in the project vicinity, the plan is applicable to all marine mammals that may occur in the action area. The plan may be modified or supplemented based on comments or new information received from the public during the public comment period.

Visual Marine Mammal Observations

The Port will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All observers will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. The Port will monitor the shutdown zone and disturbance zone before, during, and after pile driving and removal, with observers located at the best practicable vantage points. Based on our requirements, the Marine Mammal Monitoring Plan would implement the following procedures for pile driving:

- MMOs would be located at the best vantage point(s) in order to properly see

the entire shutdown zone and as much of the disturbance zone as possible. During vibratory driving, a minimum of four MMOs will be deployed, including two shore-based (with one of these located appropriately to focus on the shutdown zone) and two vessel-based. Please see Figure 2 of the Port's plan. During vibratory removal, a minimum of three observers shall be deployed at the best vantage points to observe the shutdown and disturbance zones.

- During all observation periods, observers will use binoculars and the naked eye to search continuously for marine mammals.
- If the shutdown zones are obscured by fog or poor lighting conditions, pile driving at that location will not be initiated until that zone is visible.
- The shutdown and disturbance zones around the pile will be monitored for the presence of marine mammals before, during, and after any pile driving or removal activity.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. Monitoring biologists will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to protocol will be coordinated between NMFS and the Port.

Although we have determined that incidental take of multiple species with recorded occurrence in the action area (e.g., killer whales, humpback whales) is unlikely (see ''Estimated Take by Incidental Harassment''), the Port's monitoring plan will provide additional protections against the unauthorized take of these species. While it is difficult to say with certainty that smaller cetaceans or pinnipeds would always be detected in an area as large as the typical ZOI for vibratory driving (in this case estimated at 6.7 km^2), we do believe that there is a high degree of certainty that large whales would be detected. Therefore, in the event that humpback whales, gray whales, minke whales, or killer whales occurred in the project area, the Port would be able to detect those animals and cease construction activity as necessary to avoid unauthorized take. The Port will also consult available sighting networks (e.g., Orca Network) on a daily basis while pile installation and removal is occurring for situational awareness of large whale occurrence in the general vicinity of Friday Harbor, such that MMOs know when there is the increased possibility for such species to be present.

Data Collection

We require that observers use approved data forms. Among other pieces of information, the Port will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, the Port will attempt to distinguish between the number of individual animals taken and the number of incidents of take. We require that, at a minimum, the following information be collected on the sighting forms:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (e.g., percent cover, visibility);
- Water conditions (e.g., sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Locations of all marine mammal observations; and
- Other human activity in the area.

Reporting

A draft report would be submitted within ninety calendar days of the completion of the in-water work window. The report will include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days, and will also provide descriptions of any problems encountered in deploying sound attenuating devices, any behavioral responses to construction activities by marine mammals and a complete description of all mitigation shutdowns and the results of those actions and an extrapolated total take estimate based on the number of marine mammals observed during the course of construction. A final report must be submitted within thirty days following resolution of comments on the draft report.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: ''. . . any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

All anticipated takes would be by Level B harassment resulting from vibratory pile driving/removal and involving temporary changes in behavior. Injurious or lethal takes are not expected due to the expected source levels and sound source characteristics associated with the activity, and the proposed mitigation and monitoring measures are expected to further minimize the possibility of such take.

If a marine mammal responds to a stimulus by changing its behavior (e.g., through relatively minor changes in locomotion direction/speed or vocalization behavior), the response may or may not constitute taking at the individual level, and is unlikely to affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals or on the stock or species could potentially be significant (e.g., Lusseau and Bejder, 2007; Weilgart, 2007). Given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals, it is common practice to estimate how many animals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound.

This practice potentially overestimates the numbers of marine mammals taken because it is often difficult to distinguish between the individuals harassed and incidences of harassment. In particular, for stationary activities, it is more likely that some smaller number of individuals may accrue a number of incidences of harassment per individual than for each incidence to accrue to a new individual, especially if those individuals display some degree of residency or site fidelity and the impetus to use the site (e.g., because of foraging opportunities) is stronger than the deterrence presented by the harassing activity.

The project area is not believed to be particularly important habitat for marine mammals, nor is it considered an area frequented by marine mammals. Therefore, behavioral disturbances that could result from anthropogenic sound associated with these activities are expected to affect only a relatively small number of individual marine mammals,

although those effects could be recurring over the life of the project if the same individuals remain in the project vicinity. Specifically, at Friday Harbor marina there is a known individual harbor seal that the Port believes is unlikely to respond to harassing stimuli in aversive manner, meaning the seal is believed likely to simply remain in the immediate vicinity of the marina and be exposed to sound (either airborne or underwater) at or above levels that we consider to incur incidental take. This is accounted for in estimating incidental take for harbor seals below.

The Port has requested authorization for the incidental taking of small numbers of Steller sea lions, California sea lions, harbor seals, Dall's porpoises, and harbor porpoises near Friday Harbor that may result from pile driving during construction activities associated with the marina reconstruction project described previously in this document. In order to estimate the potential incidents of take that may occur incidental to the specified activity, we must first estimate the extent of the sound field that may be produced by the activity and then consider in combination with information about marine mammal density or abundance in the project area. We first provide information on applicable sound thresholds for determining effects to marine mammals before describing the information used in estimating the sound fields, the available marine mammal density or abundance information, and the method of estimating potential incidences of take.

Sound Thresholds

We use generic sound exposure thresholds to determine when an activity that produces sound might result in impacts to a marine mammal such that a take by harassment might occur. To date, no studies have been conducted that explicitly examine impacts to marine mammals from pile driving sounds or from which empirical sound thresholds have been established. These thresholds (Table 3) are used to estimate when harassment may occur (i.e., when an animal is exposed to levels equal to or exceeding the relevant criterion) in specific contexts; however, useful contextual information that may inform our assessment of effects is typically lacking and we consider these thresholds as step functions. NMFS is working to revise these acoustic guidelines; for more information on that process, please visit *www.nmfs.noaa.gov/pr/acoustics/guidelines.htm*.

TABLE 3—CURRENT ACOUSTIC EXPOSURE CRITERIA

Criterion	Definition	Threshold
Level A harassment (underwater)	Injury (PTS—any level above that which is known to cause TTS).	180 dB (cetaceans)/190 dB (pinnipeds) (rms).
Level B harassment (underwater)	Behavioral disruption	160 dB (impulsive source)/120 dB (continuous source) (rms).
Level B harassment (airborne)*	Behavioral disruption	90 dB (harbor seals)/100 dB (other pinnipeds) (unweighted).

* NMFS has not established any formal criteria for harassment resulting from exposure to airborne sound. However, these thresholds represent the best available information regarding the effects of pinniped exposure to such sound and NMFS' practice is to associate exposure at these levels with Level B harassment.

Distance to Sound Thresholds

Underwater Sound Propagation Formula—Pile driving generates underwater noise that can potentially result in disturbance to marine mammals in the project area. Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$TL = B * \log_{10}(R_1/R_2)$, where

R_1 = the distance of the modeled SPL from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20*log[range]). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log[range]). A practical spreading value of fifteen is often used under conditions, such as Friday Harbor, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss (4.5 dB reduction in sound level for each doubling of distance) is assumed here.

Underwater Sound—The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. A large quantity of literature regarding SPLs recorded from pile driving projects is available for consideration. In order to determine reasonable SPLs and their associated effects on marine mammals that are likely to result from pile driving at Friday Harbor, studies with similar properties to the specified activity were evaluated. The Port plans to install 16- and 24-in steel pipe piles via vibratory driver and to remove 12- and 20-in timber piles, as well as several 12-in steel pipe piles, via vibratory methods. We rely on measurement conducted previously by WSDOT for similar activities in similar locations for proxy source levels. Data were collected during vibratory pile driving of 24-in diameter steel piles at the Friday Harbor Ferry Terminal (immediately adjacent to the Friday Harbor marina) facility during January 2005 (Laughlin, 2010). The average SPL was measured as 162 dB rms at 10 m from the pile. For comparison, Caltrans (2012) reports summary values of 155 dB rms and 170 dB rms (at 10 m distance from source) for 12- and 36-in steel pipe piles, respectively. They do not report a value for 24-in diameter steel pipe piles. The vibratory removal of 12-in timber piles was measured at the Port Townsend

Ferry Terminal during December 2010, with an average SPL of 150 dB rms recorded at 16 m from the source (Laughlin, 2011). This is the only measurement we are aware of for vibratory pile removal and, although the 20-in diameter piles to be removed by the Port are larger, it is not expected that a slightly larger pile size would result in meaningfully greater SPLs for vibratory pile removal. Vibratory pile removal involves only very brief vibration of the pile to be removed such that liquefaction of the surrounding substrate is achieved. Pile size is not a critical factor here.

All calculated distances to and the total area encompassed by the 120-dB marine mammal sound threshold for the two activities are provided in Table 4. The Port used source values of 177 dB rms for vibratory driving and 168 dB rms for vibratory removal. Because these values are below the 180/190 dB rms injury criteria, there are no zones within which injury would be expected to occur as a result of exposure to underwater sound. Please see also Figure 1–3 of the Port's application for a spatial representation of these zones in relation to local topography, which constrains the actual sound field from reaching the estimated radial distance to threshold for vibratory driving, and in certain directions for vibratory removal. The maximum line of sight distance that may be reached from the Friday Harbor marina before encountering land is approximately 4 km.

TABLE 4—CALCULATED DISTANCE(S) TO AND AREA ENCOMPASSED BY UNDERWATER MARINE MAMMAL SOUND THRESHOLDS DURING PILE INSTALLATION

Threshold	Distance [1]	Area
Vibratory driving, disturbance (120 dB)	6.3 km	[2] 6.7 km
Vibratory removal, disturbance (120 dB)	1.6 km	[2] 1.8 km

[1] Radial distances presented for reference only. Maximum line of sight distance from Friday Harbor before encountering land is approximately 4 km. Please refer to Figure 1–3 in the Port's application.

Airborne Sound—Pile driving can generate airborne sound that could potentially result in disturbance to marine mammals (specifically, pinnipeds) that are hauled out or at the water's surface with heads above the water (see Table 3). The Port has estimated that airborne noise produced by vibratory pile driving might attenuate to 90 dB rms (unweighted) within approximately 30 m. However, because there are no regular haul-outs within such a small area around the site of proposed pile driving activity, we believe that incidents of incidental take resulting solely from airborne sound are unlikely. It is possible that a pinniped could occur within that zone, either in water or hauled out on some structure, and thereby be exposed to levels of airborne sound that we associate with harassment, but any such happenstance occurrence would likely be accounted for in our estimation of incidental take from underwater sound. The one exception is the known individual harbor seal that tends to remain at the marina. There is the potential for this individual animal to remain hauled out during construction activity, and therefore be exposed solely to airborne sound. We have accounted specifically for this individual, but do not propose to authorize any take of marine mammals due solely to airborne sound, while recognizing that pinnipeds occurring within this estimated 30-m radius zone could experience harassment as a result of either airborne or underwater sound. See the following discussion on harbor seals for more detail.

In summary, we recognize that pinnipeds within the estimated airborne harassment zone, whether in the water or hauled out, could be exposed to airborne sound that may result in behavioral harassment. However, any animal exposed to airborne sound above the behavioral harassment threshold is likely to also be exposed to underwater sound above relevant thresholds (which are in all cases larger zones than those associated with airborne sound). Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Multiple incidents of exposure to sound above NMFS' thresholds for behavioral harassment are not believed to result in increased behavioral disturbance, in either nature or intensity of disturbance reaction. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

Marine Mammal Densities

The Navy has developed, with input from regional marine mammal experts, estimates of marine mammal densities in Washington inland waters for the Navy Marine Species Density Database (NMSDD). A technical report (Hanser *et al.,* 2014) describes methodologies and available information used to derive these densities, which are generally considered the best available information for Washington inland waters, except where specific local abundance information is available. Here, we have determined that for all species with potential occurrence at Friday Harbor, the Navy NMSDD information represents the best available information for the take estimation described here. We briefly describe the information used, but see Hanser *et al.* (2014) for more detail. That document is publicly available on the Internet at *http://nwtteis.com/DocumentsandReferences/NWTTDocuments/SupportingTechnicalDocuments.aspx* (accessed June 20, 2014). These density estimates are primarily derived from available literature, except as described below.

Description of Take Calculation

The take calculations presented here rely on the best data currently available for marine mammal populations in the San Juan Islands. The formula is founded on the following assumptions:

- An individual can only be taken once during a 24-hour period;
- There were will be 26 total days of vibratory pile driving with a ZOI of 6.7 km^2 and three total days of vibratory pile removal with a ZOI of 1.8 km^2; and,
- Exposures to sound levels above the relevant thresholds equate to take, as defined by the MMPA.

The calculation for marine mammal takes is estimated by:

Exposure estimate = (n * ZOI) * days of total activity

Where:

n = density estimate used for each species/season

ZOI = sound threshold ZOI area; the area encompassed by all locations where the SPLs equal or exceed the threshold being evaluated

n * ZOI produces an estimate of the abundance of animals that could be present in the area for exposure, and is rounded to the nearest whole number before multiplying by days of total activity.

The ZOI impact area is estimated using the relevant distances in Table 4, taking into consideration the possible affected area due to topographical constraints of the action area (i.e., radial distances to thresholds are not always reached). There are a number of reasons why estimates of potential incidents of take may be conservative, assuming that available density or abundance estimates and estimated ZOI areas are accurate. We assume, in the absence of information supporting a more refined conclusion, that the output of the calculation represents the number of individuals that may be taken by the

specified activity. In fact, in the context of stationary activities such as pile driving and in areas where resident animals may be present, this number more realistically represents the number of incidents of take that may accrue to a smaller number of individuals. While pile driving can occur any day throughout the in-water work window, and the analysis is conducted on a per day basis, only a fraction of that time (typically a matter of hours on any given day) is actually spent pile driving. The potential effectiveness of mitigation measures in reducing the number of takes is typically not quantified in the take estimation process. For these reasons, these take estimates may be conservative. See Table 5 for total estimated incidents of take. Note that we also provide information below for those species with recorded occurrence in the vicinity, but for which we do not propose to authorize take (e.g., minke whale), in order to show the basis for our determination.

California Sea Lion—Jeffries *et al.* (2003) split the inland waters geographic area into seven regions, including the San Juan Islands. The Navy used this regional stratification as the basis for deriving density estimates for pinnipeds occurring in inland waters. For California sea lions, the Navy merged two regions (San Juan Islands and Strait of Juan de Fuca) and determined the number of animals known to use haul-outs in the combined stratum. The total number of expected California sea lions was then divided by the area of the stratum give a total, non-seasonal density. California sea lions are not generally present in July (outside the work period for this proposed action).

Steller Sea Lion—Similarly, a combined San Juan Islands/Strait of Juan de Fuca stratum was defined for Steller sea lions. The number of animals known to use haul-outs in the stratum was then determined and divided by the area to derive a non-seasonal density. However, Steller sea lions are not generally present from June–September (only September is within the work period for this proposed action).

Harbor Seal—The Navy's methodology for harbor seals follows that described in Jeffries *et al.* (2003). The authors conducted aerial surveys of harbor seals in 1999 for the Washington Department of Fish and Wildlife, dividing the survey areas into seven strata (including five in inland waters and two in coastal waters). To account for animals in the water and not observed during survey counts, a correction factor of 1.53 was applied (Huber *et al.,* 2001) to derive a total population for each stratum (including the San Juan Islands). The correction factor (1.53) was based on the proportion of time seals spend on land versus in the water over the course of a day, and was derived by dividing one by the percentage of time harbor seals spent on land. These data came from tags (VHF transmitters) applied to harbor seals at six areas (Grays Harbor, Tillamook Bay, Umpqua River, Gertrude Island, Protection/Smith Islands, and Boundary Bay, BC) within two different harbor seal stocks (the coastal stock and the Washington inland waters stock) over four survey years. Although the sampling areas included both coastal and inland waters, with pooled correction factors of 1.50 and 1.57, respectively, Huber *et al.* (2001) found no significant difference in the proportion of seals ashore among the six sites and no interannual variation at one site studied across years. Therefore, we retain the total pooled correction factor of 1.53 here in determining a non-seasonal density estimate for the San Juan Islands stratum.

However, to determine an instantaneous in-water density estimate, a secondary correction may be applied to account for harbor seals that are hauled out at any given moment. The tagging research in 1991 and 1992 conducted by Huber *et al.* (2001) was repeated for two sites by Jeffries *et al.* (2003), using the same methods for the 1999 and 2000 survey years. These surveys indicated that approximately 35 percent of harbor seals are in the water versus hauled out on a daily basis (Huber *et al.,* 2001; Jeffries *et al.,* 2003). A corrected density can then be derived from the number of harbor seals that are present in the water at any one time. In this instance, we have chosen (in consultation with the Port) to retain the larger, uncorrected density as a precautionary measure.

Harbor Porpoise—NMFS conducted aerial line-transect surveys in 2002 and 2003 for the purpose of estimating harbor porpoise abundance off the coasts of Oregon, Washington, and southern British Columbia, as well as portions of the inland waters. Survey effort was limited to sea state conditions of Beaufort 0–2 and cloud cover less than 25 percent. In the inland waters, the surveys covered Washington and British Columbian waters in the Strait of Juan de Fuca, San Juan Islands, Gulf Islands, and Strait of Georgia. To estimate the total average number of animals sighted in each region, the number of sightings of each species was multiplied by the average group size. For harbor porpoise, estimates of mean group size were available on a region-specific basis for each year. Based on the average density estimates, weighted averages were derived to provide separate density estimates for the eastern portion of the Strait of Juan de Fuca and San Juan Islands region.

Dall's Porpoise—The same aerial surveys described above for harbor porpoise were used to determine density estimates for other cetacean species, including Dall's porpoise. For these other species, data from the 2002–2003 surveys were prorated relative to harbor porpoise. The number of Dall's porpoise sightings from these surveys was sufficient to derive separate density estimates for the eastern portion of the Strait of Juan de Fuca and San Juan Islands region.

Killer Whale—Both southern resident and west coast transient killer whales are known to occur in the San Juan Islands. For resident whales, photo-identification of individual whales has yielded a robust understanding of stock structure, behavior, and movement in inland waters. The Navy used average pod-specific seasonal residency patterns in concert with sightings data to produce density estimates for each of four seasons. For transient whales, monthly occurrence data were used in concert with an estimate of average group size to produce seasonal density estimates. For more detail on these density estimates, please see Hanser *et al.* (2014). All density estimates for Washington inland waters are presented as the results of spatial models with various values throughout the spatial range. The numbers presented here are the season- and range-specific maxima. For resident whales, density in the San Juan Islands ranges from 0.0007 (winter) to 0.02 whales/km^2 (spring through fall). For transient whales, density in the San Juan Islands varies from 0.0006 whales/km^2 in winter to 0.006 in summer and 0.003 whales/km^2 in spring/fall. For purposes of estimating the potential for incidental take, we have used the largest density values, which have led us to conclude that incidental take of killer whales is unlikely. However, it is important to note the even lower potential for occurrence in winter, when approximately half of the project would occur.

Minke whale—Although minke whales are known to establish home ranges in inland waters of Washington (Dorsey, 1983; Dorsey *et al.,* 1990), there are no published density estimates for inland waters. The same aerial surveys described above for harbor and Dall's porpoises did not produce sufficient sightings to derive regionally-stratified estimates of abundance, so a single year-round density estimate was calculated

for the Strait of Juan de Fuca and San Juan Islands region. This estimate (0.02 whales/km^2) is similar to that derived by Williams and Thomas (2007) for other inshore waters (Strait of Georgia; 0.01 whales/km^2).

Gray whale—Carretta et al. (2000) provided an overall west coast density estimate for migrating gray whales (January–April) of 0.051 whales/km^2. The Navy then further assumes that, on the basis of sightings data available from Orca Network (*www.orcanetwork.org*), during the winter-spring migration period approximately ten percent of migrating whales may enter the Strait of Juan de Fuca and San Juan Islands (0.0051 whales/km^2). During the summer/fall, when migratory gray whales are not present, the Navy assumes that thirty percent of the Pacific Coast Feeding Group (not discussed here but please see Carretta *et al.* [2013a]) may occur within the Strait of Juan de Fuca and San Juan Islands, also on the basis of information available through Orca Network (0.00014 whales/km^2). As for killer whales, we use the higher density to estimate the potential for incidental take, but note the lower likelihood of occurrence during a large portion of the work period.

Humpback whale—No published density estimates are available for humpback whales in Washington inland waters although opportunistic sightings have increased over the last decade (as reported through Orca Network). Based on line-transect abundance estimates for offshore waters of Oregon and Washington (Barlow and Forney, 2007), and consideration of opportunistic sightings recorded by the Orca Network, the Navy assumed that the abundance estimate of humpback whales occurring within the Strait of Juan de Fuca and the San Juan Islands area would be twenty percent of the offshore estimates. This assumption results in values of 0.00014 whales/km^2 (spring through fall) and 0.00002 whales/km^2 (winter). We note that although the higher estimate was used to estimate the potential for incidental take, there is a lower likelihood of occurrence during half of the work period.

Pacific white-sided dolphin—Pacific white-sided dolphins are known to enter the inshore passes of British Columbia and Washington (Norman *et al.,* 2004; Stacey and Baird, 1991) and small groups have also been seen in Haro Strait off San Juan Island, but published density estimates are not available for these inland waters. Based on line-transect abundance estimates for offshore waters of Oregon and Washington (Barlow and Forney, 2007), and consideration of opportunistic sightings recorded by the Orca Network, the Navy assumed that the abundance estimate of Pacific white-sided dolphins occurring within the Strait of Juan de Fuca and the San Juan Islands area during summer/fall would be ten percent of that produced for offshore waters (0.00248 animals/km^2). Abundance is expected to decrease in winter/spring, and density estimates were reduced by an order of magnitude for this period (i.e., 0.00025 dolphins/km^2). We note that although the higher estimate was used to estimate the potential for incidental take, there is a lower likelihood of occurrence during half of the work period.

Northern elephant seal—The Navy used a combined Strait of Juan de Fuca and San Juan Islands regional stratum and the number of animals known to use haul-outs in that region to derive a non-seasonal density estimate for elephant seals.

As described in the introduction to this section, we evaluate the potential for incidental take to occur by first multiplying the most appropriate species- and season-specific density estimate by the relevant area of effect (ZOI). Those areas are estimated as 1.8 and 6.7 km^2 for vibratory pile removal and vibratory pile installation, respectively. The product of that calculation is then rounded to the nearest whole number to estimate an instantaneous abundance within the relevant ZOI, which is then multiplied by the number of days of the relevant activity (three and 26 for pile removal and installation, respectively) to arrive at an activity-specific estimate of potential incidents of incidental take. For all species, we have used the highest available density estimate (for either fall or winter when seasonal estimates are available) to evaluate the potential for incidental take. Table 5 summarizes the density estimates described above, the interim products of the calculation, and sums to the total proposed take authorization for each species. We have provided information for all species that may occur in the San Juan islands, but take authorization is proposed for only a subset of these (i.e., California and Steller sea lions, harbor seal, and harbor and Dall's porpoises). For the remaining species, the take estimation process indicates that incidental take is unlikely. While we recognize that these species may nevertheless occur in the project area, we believe that the Port's monitoring plan further reduces the potential for any of these species (especially the large whales, which are relatively easy to detect and whose occurrence in the region may be noted on a daily basis through consultation with sighting networks such as Orca Network). Finally, we note that there is a single, known individual harbor seal that is not expected to react to stimuli with avoidance behavior. Therefore, we expect that there is the potential for this individual animal to remain present through each day of construction and have added 29 takes (one for each anticipated day of construction) to the total estimate for harbor seals. For reasons described previously in this document, no Level A takes would be expected (nor indicated through the take estimation process) and no takes occurring solely via exposure to airborne sound (with the potential exception of the known individual described here and previously). No take authorization is proposed for those species with a zero value in the right-hand column of Table 5, and no Level A takes or takes solely via airborne sound are proposed for authorization.

TABLE 5—CALCULATIONS FOR INCIDENTAL TAKE ESTIMATION

Species	n (animals/km^2) [1]	n * ZOI (vibratory pile removal)	Estimated Level B takes; vibratory removal	n * ZOI (vibratory pile installation)	Estimated Level B takes; vibratory installation	Total proposed authorized takes (% of total stock)
California sea lion	0.676	1.2	3	4.5	130	133 (0.04)
Steller sea lion	0.935	1.7	6	6.2	156	162 (0.3)
Harbor seal	3.1799	5.8	18	21.2	546	[2] 593 (4.1)
Harbor porpoise	2.11226	3.9	12	14.1	364	376 (3.5)
Dall's porpoise	0.39	0.7	3	2.6	78	81 (0.2)
Killer whale (transient)	0.00306 (fall)	0.01	0	0.02	0	0

TABLE 5—CALCULATIONS FOR INCIDENTAL TAKE ESTIMATION—Continued

Species	n (animals/km²) [1]	n * ZOI (vibratory pile removal)	Estimated Level B takes; vibratory removal	n * ZOI (vibratory pile installation)	Estimated Level B takes; vibratory installation	Total proposed authorized takes (% of total stock)
Killer whale (resident)	0.02024 (fall)	0.04	0	0.1	0	0
Minke whale	0.02	0.04	0	0.1	0	0
Humpback whale	0.00014 (fall)	0.0003	0	0.001	0	0
Gray whale	0.0051 (winter)	0.01	0	0.03	0	0
Pacific white-sided dolphin	0.00248 (fall)	0.005	0	0.02	0	0
Northern elephant seal	0.0063	0.01	0	0.04	0	0

[1] Best available species- and season-specific density estimate, with season noted in parentheses where applicable.
[2] This value includes 29 additional incidents of take to account for the known individual seal expected to remain present at Friday Harbor during construction. See explanation above.

Analyses and Preliminary Determinations

Negligible Impact Analysis

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, we consider other factors, such as the likely nature of any responses (e.g., intensity, duration), the context of any responses (e.g., critical reproductive time or location, migration), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

Pile driving activities associated with the marina reconstruction project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from underwater sounds generated from pile driving. Potential takes could occur if individuals of these species are present in the ensonified zone when pile driving is happening.

No injury, serious injury, or mortality is anticipated given the methods of construction. Measures designed to minimize the possibility of injury to marine mammals (e.g., exclusion zones) further reduce any possibility of injury. Specifically, vibratory hammers are the sole method of installation, and this activity does not have significant potential to cause injury to marine mammals due to the relatively low source levels produced (expected to be less than 180 dB rms) and the lack of potentially injurious source characteristics. Impact pile driving produces short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks than does vibratory driving or removal. The likelihood that marine mammal detection ability by trained observers is high under the general environmental conditions expected for Friday Harbor, in concert with the very small shutdown zones—which are defined as a precautionary measure only, as expected source levels are below the relevant injury criteria—further enables the implementation of shutdowns to avoid any potential for injury.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from similar past projects, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. In response to vibratory driving, harbor seals (which may be somewhat habituated to human activity along the Friday Harbor waterfront) have been observed to orient towards and sometimes move towards the sound. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Thus, even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in fitness to those individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the project area while the activity is occurring.

For pinnipeds, no rookeries are present in the project area, and there are few haul-outs other than rocks used by harbor seals at the distant edge of the Level B ZOI for pile installation and opportunistic haul-outs provided by man-made objects. The project area is not known to provide foraging habitat of any special importance. The pile driving activities analyzed here are similar to other nearby construction activities In Washington inland waters, including recent projects conducted by WSDOT at the same location (Friday Harbor and Orcas Island Ferry Terminals), which have taken place with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment.

In summary, this negligible impact analysis is founded on the following factors: (1) The possibility of injury, serious injury, or mortality may reasonably be considered discountable; (2) the anticipated incidences of Level B harassment consist of, at worst, temporary modifications in behavior; (3) the absence of any major rookeries and only a few isolated and opportunistic haul-out areas near or adjacent to the project site; (4) the absence of any other known areas or features of special significance for foraging or reproduction within the project area; and (6) the presumed efficacy of the planned mitigation measures in reducing the effects of the specified activity to the level of least practicable impact. In addition, none of the stocks for which take authorization is proposed are listed

under the ESA or designated as depleted under the MMPA. All of the stocks for which take is authorized are thought to be increasing or to be within OSP size. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, including those conducted at the same time of year and in the same location, demonstrate that the potential effects of the specified activity will have only short-term effects on individuals. The specified activity is not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, we preliminarily find that the total marine mammal take from the Port's marina reconstruction activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers Analysis

The numbers of animals authorized to be taken for all species would be considered small relative to the relevant stocks or populations (ranging from less than one percent for sea lions and Dall's porpoise to 4.1 percent for harbor seals) even if each estimated taking occurred to a new individual—an extremely unlikely scenario. For pinnipeds occurring in the vicinity of the Friday Harbor waterfront, there will almost certainly be some overlap in individuals present day-to-day, and these takes are likely to occur only within some small portion of the overall regional stock, such as the number of harbor seals that regularly use nearby haul-out rocks. For migratory species, the segment of the overall stock to which take would accrue is likely much smaller. For example, of the estimated 296,500 California sea lions, only certain adult and subadult males—believed to number approximately 3,000–5,000 by Jeffries *et al.* (2000)—travel north during the non-breeding season. That number has almost certainly increased with the population of California sea lions—the 2000 SAR for California sea lions reported an estimated population size of 204,000–214,000 animals—but likely remains a relatively small portion of the overall population.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, we preliminarily find that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, we have determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

No marine mammal species listed under the ESA are expected to be affected by these activities. Therefore, we have determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

We are currently conducting an analysis, pursuant to NEPA of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (CEQ; 40 CFR parts 1500–1508), to determine whether or not this proposed activity may have a significant effect on the human environment. This analysis will be completed prior to the issuance or denial of this proposed IHA.

Proposed Authorization

As a result of these preliminary determinations, we propose to issue an IHA to the Port for conducting the described construction activities at Friday Harbor, from September 1, 2014 through February 15, 2015, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The proposed IHA language is provided next.

This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

1. This Incidental Harassment Authorization (IHA) is valid from September 1, 2014 through February 15, 2015.

2. This IHA is valid only for pile driving and removal activities associated with reconstruction of the Friday Harbor Marina. Any reference to pile driving in this document is intended to refer to both pile driving and removal.

3. General Conditions.

(a) A copy of this IHA must be in the possession of the Port, its designees, and work crew personnel operating under the authority of this IHA.

(b) The species authorized for taking are the harbor seal (*Phoca vitulina*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), Dall's porpoise (*Phocoenoides dalli*), and the harbor porpoise (*Phocoena phocoena*).

(c) The taking, by Level B harassment only, is limited to the species listed in condition 3(b). See Table 1 (attached) for numbers of take authorized.

(d) The taking by injury (Level A harassment), serious injury, or death of any of the species listed in condition 3(b) of the Authorization or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA.

(e) The Port shall conduct briefings between construction supervisors and crews, marine mammal monitoring team, and Port staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

4. Mitigation Measures.

The holder of this Authorization is required to implement the following mitigation measures:

(a) During all pile driving, the Port shall implement a minimum shutdown zone of 10 m radius around the pile for marine mammals. If a marine mammal comes within this zone, such operations shall cease. No marine mammal shall be exposed to sound pressure levels equaling or exceeding 180/190 dB rms (re 1 μPa) for cetaceans and pinnipeds, respectively, in order to prevent unauthorized Level A harassment.

(b) The Port shall similarly avoid direct interaction with marine mammals during in-water heavy machinery work other than pile driving that may occur in association with the construction project. If a marine mammal comes within 10 m of such activity, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions, as appropriate.

(c) The Navy shall establish monitoring locations as described in the Marine Mammal Monitoring Plan (Monitoring Plan; attached). For pile installation activities, a minimum of one observer shall be assigned to the active pile driving rig in order to monitor the shutdown zone, while at least three additional observers shall be positioned for optimal monitoring of the surrounding waters within the Level B harassment zone. At least two of these shall be vessel-based. During pile removal, a minimum of three observers shall be deployed at the best vantage

points to observe the shutdown and disturbance zones. The zone to be monitored is as depicted in Figure 2 of the attached Plan. These observers shall record all observations of marine mammals, as well as behavior and potential behavioral reactions of the animals.

(d) Monitoring shall take place from 15 minutes prior to initiation of pile driving activity through 30 minutes post-completion of pile driving activity. Pre-activity monitoring shall be conducted for 15 minutes to ensure that the shutdown zone is clear of marine mammals, and pile driving may commence when observers have declared the shutdown zone clear of marine mammals. In the event of a delay or shutdown of activity resulting from marine mammals in the shutdown zone, animals shall be allowed to remain in the shutdown zone (i.e., must leave of their own volition) and their behavior shall be monitored and documented. Monitoring shall occur throughout the time required to drive a pile. The shutdown zone must be determined to be clear during periods of good visibility (i.e., the entire shutdown zone and surrounding waters must be visible to the naked eye).

(e) If a marine mammal approaches or enters the shutdown zone, all pile driving activities shall be halted. If pile driving is halted or delayed due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal.

(f) Monitoring shall be conducted by qualified observers, as described in the Monitoring Plan. Trained observers shall be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator.

(g) The Port shall use soft start techniques recommended by NMFS for vibratory pile driving. The soft start requires contractors to initiate sound from vibratory hammers for fifteen seconds at reduced energy followed by a thirty-second waiting period. This procedure is repeated two additional times. Soft start shall be implemented at the start of each day's vibratory pile driving and at any time following cessation of pile driving for a period of 30 minutes or longer.

(h) Pile driving shall only be conducted during daylight hours.

5. Monitoring.

The holder of this Authorization is required to conduct marine mammal monitoring during pile driving activity. Marine mammal monitoring and reporting shall be conducted in accordance with the Monitoring Plan.

(a) The Port shall collect sighting data and behavioral responses to pile driving for marine mammal species observed in the region of activity during the period of activity. All observers shall be trained in marine mammal identification and behaviors, and shall have no other construction-related tasks while conducting monitoring.

(b) For all marine mammal monitoring, the information shall be recorded as described in the Monitoring Plan, to include at minimum:

(i) Date and time that monitored activity begins or ends;

(ii) Construction activities occurring during each observation period;

(iii) Weather parameters (e.g., percent cover, visibility);

(iv) Water conditions (e.g., sea state, tide state);

(v) Species, numbers, and, if possible, sex and age class of marine mammals;

(vi) Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;

(vii) Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;

(viii) Locations of all marine mammal observations; and

(ix) Other human activity in the area.

6. Reporting.

The holder of this Authorization is required to:

(a) Submit a draft report on all marine mammal monitoring conducted under the IHA within 90 calendar days of the end of the in-water work period. A final report shall be prepared and submitted within 30 days following resolution of comments on the draft report from NMFS. This report must contain the informational elements described under 5(b), at minimum.

(b) Reporting injured or dead marine mammals:

i. In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality, Port shall immediately cease the specified activities and report the incident to the Office of Protected Resources (301–427–8425), NMFS, and the West Coast Regional Stranding Coordinator (206–526–6550), NMFS. The report must include the following information:

A. Time and date of the incident;

B. Description of the incident;

C. Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);

D. Description of all marine mammal observations in the 24 hours preceding the incident;

E. Species identification or description of the animal(s) involved;

F. Fate of the animal(s); and

G. Photographs or video footage of the animal(s).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Port to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Port may not resume their activities until notified by NMFS.

(i) In the event that Port discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (e.g., in less than a moderate state of decomposition), Port shall immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS.

The report must include the same information identified in 6(b)(i) of this IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Port to determine whether additional mitigation measures or modifications to the activities are appropriate.

(ii) In the event that Port discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), Port shall report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. Port shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

7. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

Request for Public Comments

We request comment on our analysis, the draft authorization, and any other aspect of this Notice of Proposed IHA for the Port's construction activities.

Please include with your comments any supporting data or literature citations to help inform our final decision on the Port's request for an MMPA authorization.

Dated: July 21, 2014.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC863

Taking of Marine Mammals Incidental to Specified Activities; Mukilteo Ferry Terminal Construction Work

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

ACTION: Notice; issuance of an incidental take authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the Washington State Department of Transportation (WSDOT) to take, by harassment, small numbers of eight species of marine mammals incidental to construction activities at the Mukilteo Multimodal Ferry Terminal in Mukilteo, Snohomish County, Washington, between September 2014 and August 2015.

DATES: Effective September 1, 2014, through August 31, 2015.

ADDRESSES: Requests for information on the incidental take authorization should be addressed to Jolie Harrison, Supervisor, Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. A copy of the application containing a list of the references used in this document, NMFS' Environmental Assessment (EA), Finding of No Significant Impact (FONSI), and the IHA may be obtained by writing to the address specified above or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for a one-year authorization to incidentally take small numbers of marine mammals by harassment, provided that there is no potential for serious injury or mortality to result from the activity. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Summary of Request

On August 30, 2013, WSF submitted a request to NMFS requesting an IHA for the possible harassment of small numbers of eight marine mammal species incidental to construction work associated with the Mukilteo Ferry Terminal replacement project in Mukilteo, Snohomish County, Washington. The new terminal will be located to the east of the existing location at the site of the former U.S. Department of Defense Fuel Supply Point facility, known as the Tank Farm property, which includes a large pier extending into Possession Sound (Figure 1–3 of the WSF IHA application). Completion of the entire project will occur over 4 consecutive years. WSF plans to submit an IHA request for each consecutive year of construction. The current IHA application is for the first year of construction, which is limited to removing the Tank Farm Pier.

After receiving NMFS's comment, on October 17, 2013, WSF submitted a revised IHA application. The action discussed in this document is based on WSF's October 17, 2013, IHA application.

Description of the Specified Activity

Detailed description of the WSDOT's Mukilteo Ferry Terminal construction activities is provided in the **Federal Register** notice for the proposed IHA (78 FR 72643; December 3, 2013). Since that time, no changes have been made to the proposed construction activities at the Mukilteo Ferry Terminal. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to WSDOT was published in the **Federal Register** on December 3, 2013. That notice described, in detail, WSDOT's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission). The Commission recommends NMFS issue the IHA to WSDOT, subject to inclusion of the proposed mitigation and monitoring measures described in the proposed IHA. NMFS agrees with the Commission's recommendation and issued the IHA with mitigation and monitoring measures described below.

Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species under NMFS jurisdiction most likely to occur in the construction area include Pacific harbor seal (*Phoca vitulina richardsi*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), killer whale (*Orcinus orca*), gray whale (*Eschrichtius robustus*), and humpback whale (*Megaptera novaeangliae*).

General information on the marine mammal species found in the vicinity of the project area in Washington waters can be found in Caretta *et al.* (2011), which is available at the following URL: *http://www.nmfs.noaa.gov/pr/pdfs/sars/po2011.pdf.* Specific information concerning these species in the vicinity of the action area is provided in the **Federal Register** notice for the proposed IHA and in WSDOT's IHA application. Therefore, it is not repeated here.

Potential Effects of the Specified Activity on Marine Mammals

The effects of underwater noise from in-water vibratory pile removal associated with the Mukilteo Ferry Terminal Tank Farm removal has the potential to result in behavioral harassment of marine mammal species and stocks in the vicinity of the action area. The Notice of Proposed IHA included a discussion of the effects of anthropogenic noise on marine mammals, which is not repeated here. No instances of hearing threshold shifts, injury, serious injury, or mortality are expected as a result of WSDOT's activities given the strong likelihood that marine mammals would avoid the immediate vicinity of the pile driving area.

Potential Effects on Marine Mammal Habitat

The primary potential impacts to marine mammals and other marine species are associated with elevated sound levels, but the project may also result in additional effects to marine mammal prey species and short-term local water turbidity caused by in-water construction due to pile removal and pile driving. These potential effects are discussed in detail in the **Federal Register** notice for the proposed IHA and are not repeated here.

Potential Impacts on Availability of Affected Species or Stocks for Taking for Subsistence Uses

No subsistence harvest of marine mammals occurs in the action area.

Mitigation Measures

In order to issue an incidental take authorization under Section 101(a)(5)(D) of the MMPA, NMFS must prescribe, where applicable, the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

For WSDOT's Mukilteo Ferry Terminal construction work, NMFS is requiring WSDOT to implement the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity as a result of the in-water construction activities.

Since the measured source levels (at 16 m) of the vibratory hammer involved in pile removal are below NMFS current thresholds for Level A takes, i.e., below 180 dB re 1 μPa (rms), no exclusion zone would be established, and there would be no required power-down and shutdown measures. In addition, as discussed in the **Federal Register** notice for the proposed IHA, the ambient noise level at the proposed work site is approximately 122 dB re 1 μPa. WSF would establish and monitor a zone of influence (ZOI) where the received level falls to this ambient noise level.

One major mitigation measure for WSDOT's proposed pile removal activities at the Mukilteo Tank Farm Pier is ramping up, or soft start, of vibratory pile hammers. The purpose of this procedure is to reduce the startling behavior of marine mammals in the vicinity of the proposed construction activity from sudden loud noise.

Soft start requires contractors to initiate noise from vibratory hammers for 15 seconds at reduced energy followed by a 1-minute waiting period. The procedure will be repeated two additional times. Each day, WSF will use the soft-start technique at the beginning of pile removal, or if pile removal has ceased for more than one hour.

To ensure that marine mammal takes will not exceed the authorized levels, monitoring for marine mammal presence will take place 30 minutes before, during and 30 minutes after pile driving to ensure that marine mammals takes will not exceed the authorized levels.

If the number of any allotted marine mammal takes (see Estimated Take by Incidental Harassment section below) reaches the limit under the IHA (if issued), WSDOT would implement shutdown and power down measures if such species/stock of animal approaches the Level B harassment zone.

Especially, to ensure that the Level B takes of Southern Resident killer whales (SRKW) does not exceed 5% of its population, shutdown measures will be taken when SRKW approach the ZOI during vibratory pile removal. Pile removal will not resume until the SRKW exit the ZOI.

If killer whales approach the ZOI during vibratory pile removal, and it is unknown whether they are SRKW or transient, it shall be assumed they are SRKW and work will be paused until the whales exit the ZOI.

If a SRKW or an unidentified killer whale enters the ZOI undetected, up to 4 'unintentional' Level B harassment takes will be allowed. Work will be paused until the killer whale exits the ZOI to avoid further Level B harassment take.

Furthermore, the contractor shall regularly check fuel hoses, oil drums, oil or fuel transfers valves, fittings, etc. for leaks, and shall maintain and store materials properly to prevent spills.

Mitigation Conclusions

Based on our evaluation of the prescribed mitigation measures, NMFS has determined the measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

Monitoring Measures

Any ITA issued under Section 101(a)(5)(D) of the MMPA is required to prescribe, where applicable, ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) state that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

(1) Marine Mammal Monitoring Coordination

WSF will conduct briefings with the construction supervisors and the crew, and marine mammal observer(s) prior to the start of pier removal to discuss marine mammal monitoring protocol and requirement to halt work.

Prior to the start of pile driving, the Orca Network and/or Center for Whale Research would be contacted to find out the location of the nearest marine mammal sightings. The Orca Sightings Network consists of a list of over 600 (and growing) residents, scientists, and government agency personnel in the U.S. and Canada. Sightings are called or emailed into the Orca Network and immediately distributed to other sighting networks including: The Northwest Fisheries Science Center of NMFS, the Center for Whale Research, Cascadia Research, the Whale Museum

Hotline and the British Columbia Sightings Network.

Sightings information collected by the Orca Network includes detection by hydrophone. The SeaSound Remote Sensing Network is a system of interconnected hydrophones installed in the marine environment of Haro Strait (west side of San Juan Island) to study orca communication, in-water noise, bottomfish ecology and local climatic conditions. A hydrophone at the Port Townsend Marine Science Center measures average in-water sound levels and automatically detects unusual sounds. These passive acoustic devices allow researchers to hear when different marine mammals come into the region. This acoustic network, combined with the volunteer (incidental) visual sighting network allows researchers to document presence and location of various marine mammal species.

With this level of coordination in the region of activity, WSF would be able to get real-time information on the presence or absence of whales before starting any pile removal or driving.

(2) Protected Species Observers (PSOs)

WSDOT will employ qualified PSOs to monitor the 120 dB_{rms} re 1 μPa for marine mammals. Qualifications for marine mammal observers include:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance. Use of binoculars will be necessary to correctly identify the target.
- Experience or training in the field identification of marine mammals (cetaceans and pinnipeds).
- Sufficient training, orientation or experience with the construction operation to provide for personal safety during observations.
- Ability to communicate orally, by radio or in person, with project personnel to provide real time information on marine mammals observed in the area as necessary.
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience).
- Writing skills sufficient to prepare a report of observations that would include such information as the number and type of marine mammals observed; the behavior of marine mammals in the project area during construction, dates and times when observations were conducted; dates and times when in-water construction activities were conducted; and dates and times when marine mammals were present at or within the defined ZOI; dates and times when pile removal was paused due to the presence of marine mammals.

(3) Monitoring Protocols

PSOs will be present on site at all times during pile removal. Marine mammal behavior, overall numbers of individuals observed, frequency of observation, and the time corresponding to the daily tidal cycle would be recorded.

WSF proposes the following methodology to estimate marine mammals that were taken as a result of the proposed Mukilteo Multimodal Tank Farm Pier removal project:

- During vibratory pile removal, two land-based biologists will monitor the area from the best observation points available. If weather conditions prevent adequate land-based observations, boat-based monitoring may be implemented.
- To verify the required monitoring distance, the vibratory Level B behavioral harassment ZOI will be determined by using a range finder or hand-held global positioning system device.
- The vibratory Level B acoustical harassment ZOI will be monitored for the presence of marine mammals 30 minutes before, during, and 30 minutes after any pile removal activity.
- Monitoring will be continuous unless the contractor takes a significant break, in which case, monitoring will be required 30 minutes prior to restarting pile removal.
- If marine mammals are observed, their location within the ZOI, and their reaction (if any) to pile-driving activities will be documented.

NMFS has determined that the monitoring measures described above are adequate, particularly as they relate to assessing the level of taking or impacts to affected species. The land-based PSO is expected to be positioned in a location that will maximize his/her ability to detect marine mammals and will also utilize binoculars to improve detection rates.

Reporting Measures

WSF will provide NMFS with a draft monitoring report within 90 days of the conclusion of the proposed construction work. This report will detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed.

If comments are received from the NMFS West Coast Regional Administrator or NMFS Office of Protected Resources on the draft report, a final report will be submitted to NMFS within 30 days thereafter. If no comments are received from NMFS, the draft report will be considered to be the final report.

Notification of Injured or Dead Marine Mammals

In addition to the reporting measures listed above, NMFS will require that WSDOT notify NMFS' Office of Protected Resources and NMFS' Stranding Network of sighting an injured or dead marine mammal in the vicinity of marine operations. Depending on the circumstance of the incident, WSDOT shall take one of the following reporting protocols when an injured or dead marine mammal is discovered in the vicinity of the action area.

(A) In the unanticipated event that the construction activities clearly cause the take of a marine mammal in a manner prohibited by this Authorization, such as an injury, serious injury or mortality (e.g., ship-strike, gear interaction, and/or entanglement), WSDOT shall immediately cease all operations and immediately report the incident to the Supervisor of Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinators. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) description of the incident;

(iii) status of all sound source use in the 24 hours preceding the incident;

(iv) environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, visibility, and water depth);

(v) description of marine mammal observations in the 24 hours preceding the incident;

(vi) species identification or description of the animal(s) involved;

(vii) the fate of the animal(s); and

(viii) photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with WSDOT to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. WSDOT may not resume their activities until notified by NMFS via letter, email, or telephone.

(B) In the event that WSDOT discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), WSDOT will

immediately report the incident to the Supervisor of the Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinators. The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with WSDOT to determine whether modifications in the activities are appropriate.

(C) In the event that WSDOT discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), WSDOT shall report the incident to the Supervisor of the Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinators, within 24 hours of the discovery. WSDOT shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. WSDOT can continue its operations under such a case.

Estimated Take by Incidental Harassment

As mentioned in the **Federal Register** notice for the proposed IHA, a worst-case scenario for Year One pile removal assumes that it may take 516 hours over 90 days in Year One to remove 1,835 piles. The actual number of hours, however, is expected to be less.

Also, as described earlier, for non-impulse noise, NMFS uses 120 dB re 1 μPa (rms) as the threshold for Level B behavioral harassment. However, the underwater ambient noise measurements conducted at the proposed project site indicate that the nominal noise level is around 122 dB re 1 μPa. Therefore, the distance to the 122 dB (ambient level) contour is used for Level B behavioral harassment. The distance to the 122 dB contour Level B acoustical harassment threshold due to vibratory pile removal extends a maximum of 1.6 km (1 mile), and determines the ZOI. The ZOI would be monitored during pile removal to estimate actual harassment take of marine mammals.

Airborne noises can affect pinnipeds, especially resting seals hauled out on rocks or sand spits. The airborne 90 dB Level B threshold for hauled out harbor seals was estimated at 37 m (123 ft), and the airborne 100 dB Level B threshold for all other pinnipeds is estimated at 12 m (39 ft).

The closest documented harbor seal haul-out is the Naval Station Everett floating security fence, and the Port Gardner log booms, both approximately 4.5 miles to the northeast of the project site). The closest documented California sea lion haul out site are the Everett Harbor navigation buoys, located approximately 3 miles to the northeast of the project site. In-air disturbance will be limited to those animals moving on the surface through the immediate pier area, within approximately 37 m (123 ft) and 12 m (39 ft) of vibratory pile removal.

Incidental take for each species is estimated by determining the likelihood of a marine mammal being present within a ZOI during active pile removal. Expected marine mammal presence is determined by past observations and general abundance near the Tank Farm Pier during the construction window. Typically, potential take is estimated by multiplying the area of the ZOI by the local animal density. This provides an estimate of the number of animals that might occupy the ZOI at any given moment. However, there are no density estimates for any Puget Sound population of marine mammal. As a result, the take requests were estimated using local marine mammal data sets (e.g., Orca Network, state and federal agencies), opinions from state and federal agencies, and observations from Navy biologists.

Based on the estimates, approximately 1,170 Pacific harbor seals, 540 California sea lions, 180 Steller sea lions, 720 harbor porpoises, 270 Dall's porpoises, 39 killer whales (35 transient, 4 Southern Resident killer whales), 70 gray whales, and 28 humpback whales could be exposed to received sound levels above 122 dB re 1 μPa (rms) from the proposed Mukilteo Multimodal Project Tank Farm Pier removal project. A summary of the estimated takes is presented in Table 1.

TABLE 1—ESTIMATED NUMBERS OF MARINE MAMMALS THAT MAY BE EXPOSED TO RECEIVED PILE REMOVAL LEVELS ABOVE 122 dB re 1 μPa (rms)

Species	Estimated marine mammal takes	Percentage
Pacific harbor seal	1,170	4.0
California sea lion	540	0.2
Steller sea lion	180	0.3
Harbor porpoise	720	7.0
Dall's porpoise	270	0.6
Killer whale, transient	35	9.8
Killer whale, Southern Resident	4	5.0
Gray whale	70	0.4
Humpback whale	20	1.0

The requested takes represent 4.0% of the Inland Washington stock harbor seals (estimated at 32,000), 0.2% of the U.S. stock California sea lion (estimated at 296,750), 0.3% of the eastern stock Steller sea lion (estimated at 52,847), 7.0% of the Washington Inland Water stock harbor porpoise (estimated at 10,682), 0.6% of the California, Oregon, and Washington stock Dall's porpoise (estimated at 42,000), 9.8% of the West Coast transient killer whale (estimated at 354), 5.0% of Southern Resident killer whale (estimated at 82), 0.4% of the Eastern North Pacific stock gray whale (estimated at 18,017), and 1.0% of the Eastern North Pacific stock humpback whale (estimated at 2,043).

Negligible Impact and Small Numbers Analysis and Determination

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be ''taken'' by the specified activities (i.e., takes by harassment only, or takes by harassment, injury, and/or death). This

estimate informs the analysis that NMFS must perform to determine whether the activity will have a ''negligible impact'' on the species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects. A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination.

In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS considers other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat.

The WSF's Mukilteo Tank Farm Pier removal project would conduct vibratory pile removal activities. Elevated underwater noises are expected to be generated as a result of pile removal. However, noise levels from the machinery and activities are not expected to reach to the level that may cause TTS, injury (PTS included), or mortality to marine mammals. Therefore, NMFS does not expect that any animals would experience Level A harassment or Level B harassment in the form of TTS from being exposed to in-water pile driving and pile removal associated with WSF construction project.

Based on long-term marine mammal monitoring and studies in the vicinity of the construction areas, it is estimated that approximately 1,170 Pacific harbor seals, 540 California sea lions, 180 Steller sea lions, 720 harbor porpoises, 270 Dall's porpoises, 39 killer whales (35 transient, 4 Southern Resident killer whales), 70 gray whales, and 20 humpback whales could be exposed to received noise levels above 122 dB_{rms} re 1 μPa from the proposed construction work at the Mukilteo Multimodal Ferry Terminal. These numbers represent approximately 0.2%–9.8% of the stocks and populations of these species that could be affected by Level B behavioral harassment. These percentages are small relative to the overall size of each species or stock. As mentioned earlier in this document, the worst case scenario for the proposed pile removal work would only take a total of 516 hours over 90 days.

In addition, these low intensity, localized, and short-term noise exposures may cause brief startle reactions or short-term behavioral modification by the animals. These reactions and behavioral changes are expected to subside quickly when the exposures cease. Additionally, no important feeding and/or reproductive areas for marine mammals are known to be near the proposed action area. Therefore, the take resulting from the proposed Mukilteo Tank Farm Pier removal project is not reasonably expected to, and is not reasonably likely to, adversely affect the marine mammal species or stocks through effects on annual rates of recruitment or survival. The maximum estimated 122 dB isopleths from vibratory pile driving is approximately 1.6 km from the pile before being blocked by landmass.

The closest documented harbor seal haul-out is the Naval Station Everett floating security fence, and the Port Gardner log booms, both approximately 4.5 miles to the northeast of the project area. The closest documented California sea lion haul-out sites are the Everett Harbor navigation buoys, located approximately 3 miles to the northeast of the project site. However, it is estimated that airborne noise from vibratory pile removal would fall below 90 dB and 100 dB re 1 20 μPa at 37 m and 12 m from the pile, respectively. Therefore, pinnipeds hauled out in the vicinity of the project area will not be affected.

For the reasons discussed in this document, NMFS has determined that the vibratory pile removal associated with the Mukilteo Tank Farm Pier Removal Project would result, at worst, in the Level B harassment of small numbers of eight marine mammal species that inhabit or visit the area. While behavioral modifications, including temporarily vacating the area around the project site, may be made by these species to avoid the resultant visual and acoustic disturbance, the availability of alternate areas within Washington coastal waters and haul-out sites has led NMFS to determine that this action will have a negligible impact on these species in the vicinity of the proposed project area.

In addition, no take by TTS, Level A harassment (injury) or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation and monitoring measures mentioned previously in this document.

National Environmental Policy Act (NEPA)

NMFS prepared an Environmental Assessment (EA) and analyzed the potential impacts to marine mammals that would result from WSDOT's Mukilteo Ferry Terminal construction work. A Finding of No Significant Impact (FONSI) was signed on February 28, 2014. A copy of the EA and FONSI is available upon request (see **ADDRESSES**).

Endangered Species Act (ESA)

The humpback whale and Southern Resident stock of killer whale are the only marine mammal species currently listed under the ESA that could occur in the vicinity of WSF's proposed construction projects. Under section 7 of the ESA, the Federal Transit Administration (FTA) and WSDOT have consulted with NMFS Northwest Regional Office (NWRO) on the proposed WSF Mukilteo Ferry Terminal Multimodal Project. NWRO issued a Biological Opinion on July 31, 2013, which concludes that the proposed Mukilteo Ferry Terminal Multimodal Project may affect, but is not likely to adversely affect the listed marine mammal species and stocks.

The issuance of an IHA to WSF constitutes an agency action that authorizes an activity that may affect ESA-listed species and, therefore, is subject to section 7 of the ESA. As the effects of the activities on listed marine mammals were analyzed during a formal consultation between the FTA and NMFS, and as the underlying action has not changed from that considered in the consultation, the discussion of effects that are contained in the Biological Opinion and accompanying memo issued to the FTA on July 31, 2013, pertains also to this action. Therefore, NMFS has determined that issuance of an IHA for this activity would not lead to any effects to listed marine mammal species apart from those that were considered in the consultation on FTA's action.

Authorization

NMFS has issued an IHA to WSDOT for the potential harassment of small numbers of eight marine mammal species incidental to construction work at the Mukilteo Ferry Terminal in Washington State, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: March 19, 2014.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD282

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Wharf Construction Project

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that we have issued an incidental harassment authorization (IHA) to the U.S. Navy (Navy) to incidentally harass, by Level B harassment only, five species of marine mammals during construction activities associated with a wharf construction project in Hood Canal, Washington.

DATES: This authorization is effective from July 16, 2014, through February 15, 2015.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of the Navy's application and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the Internet at: *www.nmfs.noaa.gov/pr/permits/incidental.htm.* A memorandum describing our adoption of the Navy's Environmental Impact Statement (2011) and our associated Record of Decision, prepared pursuant to the National Environmental Policy Act, are also available at the same site. In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified area, the incidental, but not intentional, taking of small numbers of marine mammals, providing that certain findings are made and the necessary prescriptions are established.

The incidental taking of small numbers of marine mammals may be allowed only if NMFS (through authority delegated by the Secretary) finds that the total taking by the specified activity during the specified time period will (i) have a negligible impact on the species or stock(s) and (ii) not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). Further, the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking must be set forth, either in specific regulations or in an authorization.

The allowance of such incidental taking under section 101(a)(5)(A), by harassment, serious injury, death, or a combination thereof, requires that regulations be established. Subsequently, a Letter of Authorization may be issued pursuant to the prescriptions established in such regulations, providing that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations. Under section 101(a)(5)(D), NMFS may authorize such incidental taking by harassment only, for periods of not more than one year, pursuant to requirements and conditions contained within an IHA. The establishment of prescriptions through either specific regulations or an authorization requires notice and opportunity for public comment.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: ''. . . any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.'' The former is termed Level A harassment and the latter is termed Level B harassment.

Summary of Request

On January 10, 2014, we received a request from the Navy for authorization to take marine mammals incidental to pile driving associated with the construction of an explosives handling wharf (EHW–2) in the Hood Canal at Naval Base Kitsap in Bangor, WA (NBKB). The Navy submitted a revised version of the request on April 11, 2014, which we deemed adequate and complete. The Navy plans to continue this multi-year project, involving impact and vibratory pile driving conducted within the approved in-water work window. This IHA covers only the third year (in-water work window) of the project, from July 16, 2014, through February 15, 2015.

The use of both vibratory and impact pile driving is expected to produce underwater sound at levels that have the potential to result in behavioral harassment of marine mammals. Species with the expected potential to be present during all or a portion of the in-water work window include the Steller sea lion (*Eumetopias jubatus monteriensis*), California sea lion (*Zalophus californianus*), harbor seal (*Phoca vitulina richardii*), killer whale (transient only; *Orcinus orca*), and harbor porpoise (*Phocoena phocoena vomerina*). These species may occur year-round in the Hood Canal, with the exception of the Steller sea lion, which is present only from fall to late spring (approximately late September to early May), and the California sea lion, which is only present from late summer to late spring (approximately late August to early June).

This is the third IHA issued to the Navy for this project. The Navy received IHAs, effective from July 16–February 15, in 2012–13 (77 FR 42279) and 2013–14 (78 FR 43148). Additional IHAs were issued to the Navy in recent years for marine construction projects on the NBKB waterfront. These projects include the Test Pile Project (TPP), conducted in 2011–12 in the proposed footprint of the EHW–2 to collect geotechnical data and test methodology in advance of EHW–2 (76 FR 38361); a two-year maintenance project on the existing explosives handling wharf (EHW–1) conducted in 2011–12 and 2012–13 (76 FR 30130 and 77 FR 43049); and a minor project to install a new mooring for an existing research barge, conducted in 2013–14 (78 FR 43165). In-water work associated with all projects was conducted only during the approved in-water work window (July 16–February 15). Monitoring reports for all of these projects are available on the Internet at

www.nmfs.noaa.gov/pr/permits/incidental.htm.

Description of the Specified Activity

Overview

NBKB provides berthing and support services to Navy submarines and other fleet assets. The Navy plans to continue construction of the EHW–2 facility at NBKB in order to support future program requirements for submarines berthed at NBKB. The Navy has determined that construction of EHW–2 is necessary because the existing EHW alone will not be able to support future program requirements. All piles will be driven with a vibratory hammer for their initial embedment depths, while select piles may be finished with an impact hammer for proofing, as necessary. A maximum of three vibratory drivers and one impact driver may be used simultaneously. Proofing involves striking a driven pile with an impact hammer to verify that it provides the required load-bearing capacity, as indicated by the number of hammer blows per foot of pile advancement. Sound attenuation measures (i.e., bubble curtain) will be used during all impact hammer operations.

Dates and Duration

The allowable season for in-water work, including pile driving, at NBKB is July 16 through February 15, a window established by the Washington Department of Fish and Wildlife in coordination with NMFS and the U.S. Fish and Wildlife Service (USFWS) to protect juvenile salmon. Under this action—which includes only the portion of the project that would be completed under this IHA—a maximum of 195 pile driving days may occur. Pile driving may occur on any day during the in-water work window.

Impact pile driving during the first half of the in-water work window (July 16 to September 15) may only occur between two hours after sunrise and two hours before sunset to protect breeding marbled murrelets (an Endangered Species Act [ESA]-listed bird under the jurisdiction of USFWS). Vibratory driving during the first half of the window, and all in-water work conducted between September 16 and February 15, may occur during daylight hours (sunrise to sunset). Other construction (not in-water) may occur between 7:00 a.m. and 10:00 p.m., year-round. Therefore, in-water work is restricted to daylight hours (at minimum) and there is at least a nine-hour break during the 24-hour cycle from all construction activity.

Specific Geographic Region

NBKB is located on the Hood Canal approximately 32 km west of Seattle, Washington (see Figures 2–1 through 2–4 in the Navy's application). The Hood Canal is a long, narrow fjord-like basin of the western Puget Sound. Throughout its 108-km length, the width of the canal varies from 1.6–3.2 km and exhibits strong depth/elevation gradients and irregular seafloor topography in many areas. Although no official boundaries exist along the waterway, the northeastern section extending from the mouth of the canal at Admiralty Inlet to the southern tip of Toandos Peninsula is referred to as northern Hood Canal. NBKB is located within this region. Please see Section 2 of the Navy's application for detailed information about the specific geographic region, including physical and oceanographic characteristics.

Detailed Description of Activities

Development of necessary facilities for handling of explosive materials is part of the Navy's sea-based strategic deterrence mission. The EHW–2 consists of two components: (1) the wharf proper (or Operations Area), including the warping wharf; and (2) two access trestles. Please see Figures 1–1 and 1–2 of the Navy's application for conceptual and schematic representations of the EHW–2.

For the entire project, a total of up to 1,250 permanent piles ranging in size between 24–48 inches in diameter will be driven in-water to construct the wharf, with up to three vibratory rigs and one impact driving rig operating simultaneously. The overall wharf construction plan also requires temporary installation of up to 150 falsework piles used as an aid to guide permanent piles to their proper locations. Falsework piles, which are removed upon installation of the permanent piles, are likely steel pipe piles and will be driven and removed using a vibratory driver. Pile installation will employ vibratory pile drivers to the greatest extent possible, and the Navy anticipates that most piles will be able to be vibratory driven to within several feet of the required depth. Difficulties during pile driving may be encountered as a result of obstructions that may exist throughout the project area and, if difficult driving conditions occur, increased usage of an impact hammer will be required.

Exactly what parts or how much of the project will be constructed in any given year is generally undetermined; however, a maximum of 195 days of pile driving may occur per in-water work window. The analysis contained herein is based upon the maximum of 195 pile driving days, rather than any specific number of piles driven. Additional detail regarding construction plans for the project were described in our **Federal Register** notice of proposed authorization (79 FR 32828; June 6, 2014); please see that document or the Navy's application for more information.

Description of Work Accomplished—During the first in-water work season, the contractor completed installation of 184 piles to support the main segment of the access trestle. Driven piles ranged in size from 24- to 36-in at depths ranging from 0 to 15 m. A maximum of two vibratory pile drivers and one impact hammer were operated concurrently. During the second season, installation of 411 total piles was completed, including all 315 of the wharf deck plumb piles (non-fender) and 24 of the 34 total wharf deck Lead Rubber Bearing (LRB) dolphins (clusters of four piles per dolphin). Installed piles ranged in size from 36- to 48-in at depths ranging from 12–29 m. As before, a maximum two vibratory pile drivers and one impact hammer were operated concurrently.

During the third season, the Navy expects to complete installation of the wharf deck LRBs, piling support for the warping wharf, lightning towers, and trestle deck closure as well as all fender piles. The Navy expects to complete the project in January 2016. The amount of progress made under this proposed IHA, if issued, would determine necessity of a fourth IHA for the 2015–16 in-water work window.

Comments and Responses

We published a notice of receipt of the Navy's application and proposed IHA in the **Federal Register** on June 6, 2014 (79 FR 32828). We received comments from the Marine Mammal Commission (Commission), Whale and Dolphin Conservation (WDC), and from two private citizens. The comments and our responses are provided here, and the comments have been posted on the Internet at: *www.nmfs.noaa.gov/pr/permits/incidental.htm.* Please see the comment letters for full rationale behind the recommendations we respond to below. Before providing responses to the specific recommendations we received, we provide some brief additional information in relation to two points of discussion provided by the Commission separately from their formal recommendations.

Pinniped haul-out behavior may be used to produce correction factors used to ultimately derive a density from

numbers of seals observed hauled out during surveys, as described in our **Federal Register** notice of proposed authorization. First, a correction factor based on the proportion of time seals spend on land versus in the water over the course of a day must be applied to account for animals in the water and not observed during survey counts. This correction allows estimation of total abundance in the survey area and therefore derivation of a density estimate. Next, a correction may be applied secondarily to account for harbor seals that are hauled out at any given moment and therefore unavailable to receive underwater acoustic stimuli that may result in harassment. In this case, we have chosen in consultation with the Navy to apply such a correction factor in arriving at the ultimate density estimate used for take estimation (as described in full in our **Federal Register** notice of proposed authorization). Although the Commission limits their formal recommendations in relation to the take estimate for harbor seals to use of the information provided by London *et al.* (2012) (see below), they also note in their letter that they do not feel use of such a secondary correction factor is appropriate here. We appreciate but disagree with the Commission's comment, and explained our rationale in detail on pages 32853–32854 of the **Federal Register** notice of proposed authorization.

As noted by the Commission in their current letter, they recommended in a previous letter that we require the Navy to consult with the Washington State Department of Transportation (WSDOT) and/or the California Department of Transportation (Caltrans) to determine if soft start procedures can be used safely with the vibratory hammers used by the Navy in context of this project. Please see page 32843 of our **Federal Register** notice of proposed authorization for background on this issue. We report here that since publishing our **Federal Register** notice of proposed authorization, we have successfully facilitated the Navy's discussion with these practitioners (including staff with relevant expertise from the Navy, WSDOT, and Caltrans), with a goal of determining to the extent possible the cause of the technical issues with human safety implications encountered by the Navy and, on the basis of the project specifications, under what circumstances we might expect similar issues to be encountered for other projects. In brief, discussion participants were able to reach the general conclusion that technical requirements of the Navy's EHW–2 project (e.g., relatively large piles in relatively deep water in an area with stiff substrate coupled with regulatory requirements to minimize the use of impact hammers) create a unique (insofar as we could determine) set of circumstances resulting in technical infeasibility of vibratory soft start implementation. The results of this meeting support our determination to not require vibratory soft start for this particular project due to the potential for human safety issues.

The Commission notes concern that the measure may in future be inappropriately eliminated for projects where it is a viable, effective component of a mitigation plan designed to effect the least practicable impact on marine mammals. In response to this concern, we state that we do not plan to cease requiring vibratory soft start procedures for any construction activities other than the current Navy EHW–2 project. We will evaluate the use of the measure on a case-by-case basis, but only from the perspective of potential human safety concerns.

Comment 1: The Commission recommends that we require the Navy to re-estimate the number of harbor seal takes using information from London *et al.* (2012) rather than Huber *et al.* (2001) or Jeffries *et al.* (2003), specifically by using a haul-out correction factor and percentage of time seals are in the water from the more recent work to arrive at a final density estimate.

Response: While the relevant information presented by London *et al.* (2012) is more recent than that found in Huber *et al.* (2001) or Jeffries *et al.* (2003) (i.e., 2002 and 2006 versus 1991–92 and 1999–2000) and the former work was conducted in Hood Canal, as opposed to other locations in Washington inland and coastal waters, we do not believe it appropriate to use that information for this purpose. In brief, relevant information from London *et al.* (2012) indicates that harbor seals in Hood Canal spend a significantly lower proportion of time ashore than was shown by Huber *et al.* (2001), as described in the Commission's letter. However, the London *et al.* (2012) study was not designed to address haul-out behavior, but rather was a foraging ecology study used opportunistically to take advantage of a unique opportunity that arose to examine the impact of exposure to increased killer whale predation on haul-out probability. The authors acknowledge the study limitations and imply caution in application of the results. Several points are worth noting:

- In comparison with the Huber *et al.* (2001) study, London *et al.* (2012)'s study design is poorly balanced across study sites (primarily two sites with regular human disturbance versus six different sites separated widely across inland and coastal waters) with a small sample size (29 versus 164).
- London *et al.* (2012) note that VHF deployments (representing approximately half of total sample size) may be confounded because they were only able to detect hauled animals within approximately 8 km line-of-sight from the Skokomish site, meaning that animals could have hauled out undetected at other sites. Tracking studies and behavioral observations suggest that there is interchange between sites in the Hood Canal.
- The results indicate a higher level of plasticity in haul-out behavior for harbor seals than previously described, underscoring the likelihood that these data regarding proportion of time spent ashore are confounded by human usage characteristics at the two primary study sites (discussed further below).

Further, while it would seem superficially that use of results specific to the Hood Canal may offer greater relevance to the Navy's activity, we believe it likely that the results of Huber *et al.* (2001) are in fact more indicative of the haul-out behavior that may be exhibited by seals within the project area. All regularly used Hood Canal harbor seal haul-outs (see Figure 4–1 of the Navy's application) are located at significant distance from the NBKB waterfront; seals entering and exiting the water from these haul-outs are not within or near the acoustic harassment zone resulting from the Navy's action. The two primary haul-out sites where London *et al.* (2012) tagged seals are exposed to human disturbance on a regular basis. The Dosewallips haul-out is located within Dosewallips State Park, a popular area for canoers and kayakers that is also located near a marina and its attendant motorized vessel traffic. The Skokomish site is close to a kayak rental facility and is also regularly used for tribal and commercial fisheries. Given the well-known sensitivity of harbor seals to disturbance, it is likely that this level of human activity results in significant reduction to the proportion of time seals spend ashore. The authors note that their results bear this out, in that the seasonal aspect of human disturbance (there is a noticeable drop-off in human activity beginning in September and continuing into the fall) correlates well with observed behavior. By October and November, seals exhibited more typical haul-out behavior, but the period of

study does not align well with the Navy's period of activity. On the basis of this information, we would expect typical haul-out behavior (i.e., haul-out behavior more similar to that described by Huber *et al.* (2001)) from mid-fall through the end of the Navy's work period in February (greater than half of the total work period), but London *et al.* (2012)'s period of study covered the last week of May through the first week of November (with the majority of tags falling off between mid-September and mid-October). Therefore, the study results largely reflect the increased human disturbance of the summer months due to both location and season of study. Due to the distance between the Navy's action area and the regularly used Hood Canal haul-outs, we expect that (1) local behavior of seals at those haul-outs in response to human activity is irrelevant to the Navy's activity and (2) that seals in the Navy's project area will display more typical haul-out behavior in terms of the proportion of time spent ashore.

As a result of the foregoing discussion, we believe it appropriate to retain usage of the information provided by Huber *et al.* (2001) and Jeffries *et al.* (2003) for the purpose of estimating take incidental to the Navy's specified activity. However, in consideration of the Commission's view on this issue, we propose to discuss appropriate usage of available information for harbor seals prior to considering any future requests for take authorization in the Hood Canal.

Comment 2: The Commission recommends that we require the Navy to monitor the extent of the Level B harassment zone for vibratory pile driving and removal using additional platform-, shore-, or vessel-based observers beyond the waterfront restricted area to (1) determine the numbers of marine mammals taken during pile driving and removal activities and (2) characterize the effects on those mammals, including cetaceans.

Response: The Commission provided this recommendation in relation to our proposed IHA for the second year of this project. In summary, we believe that we have developed, in consultation with the Navy, a strategy that is appropriate to accomplish the stated objectives of the Commission's recommendation. For our full rationale supporting this conclusion, please see pages 43155–43156 of our **Federal Register** notice announcing issuance of that authorization (78 FR 43148; July 19, 2013).

However, in response to the rationale provided by the Commission for this recommendation in their current letter, we agreed to explore with the Navy the feasibility of expanding visual observation coverage of the larger Level B harassment zone through placement of additional shore-based observers. In consultation with the Navy, we identified five potential locations along the NBKB waterfront for evaluation of suitability. We initially ruled out placement of observers on the Toandos Peninsula, along the Hood Canal waterfront opposite the project site (see Figure 2–1 in the Navy's application), because no viable access exists to get an observer onto that shoreline and because the beach area is lost at high tide. To access that area by water, observers would have to clear through Navy security in and out of the Waterfront Restricted Area (WRA) at NBKB, a process that would require up to two hours each way. For reference in describing the five sites (described from north to south), please see Figure 2–2 of the Navy's application.

- Site 1: This is a site located to the north of the existing EHW facility, and is not shown on the Navy's Figure 2–2. The site features a noticeable projection into the Hood Canal and ideally could provide a suitable observation location. However, the site is inaccessible due to security protocols during security convoys used to move weapons, which would occur on approximately sixty percent of construction days. In addition, this site does not provide sufficient elevation to give observers a reasonable opportunity to see animals (including cetaceans) that may occur in the deeper waters of the Level B harassment zone, meaning that the effective observation zone from this site would be indistinguishable from the WRA area, which is effectively monitored under the existing plan.
- Site 2: Located just north of the existing EHW, the view is obscured to the south by the existing structure, and the site cannot be accessed on days when weapons handling occurs (approximately sixty percent of construction days).
- Site 3: Located between Marginal Wharf and Delta Pier, this site does not offer an useful vantage outside of the WRA. The area viewable from this site is already effectively monitored.
- Site 4: Located south of Delta Pier, this site has a significantly obscured view due to the position of Delta Pier, and also does not offer any useful advantage over existing observation positions.
- Site 5: Site 5 is located on K/B Dock between Delta Pier and the Service Pier and is outside of the floating barrier that delineates the WRA boundary. Along with Site 1, this would seem to offer the best vantage for expanding the visual coverage of the larger Level B harassment zone. However, as for Site 1, there are factors that limit the utility of the site such that we do not believe any benefit offered would be commensurate with cost (e.g., the addition of two observers would cost approximately $390,000 over the course of this IHA). This location is within a second WRA fenced area for the facilities at Delta Pier and further south along the waterfront. As a result, the view provided is a small water space inside another section of WRA fencing and does not provide a view outside of it and, as for Site 1, the effective observation space would be little different from what is effectively observed within the WRA under the existing plan. Access would be limited during classified activities that take place at K/B Dock, and these activities are often scheduled ad hoc, meaning that we do not have any understanding of when or for what proportion of the project an observer might be able to be stationed at the location.

As a result of the foregoing evaluation of these sites, we do not believe that placement of observers at any of these sites would offer any advantage over the existing monitoring plan. These sites generally offer limited vantage points and limited access, and the observation that may be accomplished from the sites would not offer appreciable improvements, compared with the existing monitoring plan, towards accomplishing the objectives stated by the Commission. The Navy currently conducts opportunistic monitoring at many of these locations during non-construction periods, providing data used here to estimate takes for sea lions.

Comment 3: The Commission recommends that we require the Navy to use better methods to estimate the numbers of marine mammals taken rather than the extrapolation method recently used for EHW–2 activities.

Response: The Commission believes that the extrapolation methods used currently in the Navy's required reporting likely produce underestimates of certain species, while potentially overestimating other species, and state that they would be willing to work with us towards accomplishing this recommendation. We appreciate and accept this offer and will discuss the matter with the Commission prior to Navy's submission of reporting required under this IHA.

Comment 4: WDC states that we should deny the request for incidental take authorization due to insufficiencies in mitigation and monitoring, with specific reference to potential effects to transient and resident killer whales and

to the potential for Level A incidental take of harbor seals.

Response: The Navy recorded fourteen observations of marine mammals (all harbor seals) within the defined 190-dB exclusion zones (shutdown zones, i.e., 20 m for impact driving and 10 m for vibratory driving) while conducting impact and vibratory pile driving under the year two (2013–14) IHA for the EHW–2 project. Please see the Navy's monitoring report (available at *www.nmfs.noaa.gov/pr/permits/incidental.htm*) and ''Monitoring Results from Previously Authorized Activities'' (later in this document) for details. All fourteen of these incidents resulted when individual seals surfaced within the zones, and pile driving activity was immediately halted in each case. We do not believe that these incidents reflect any insufficiency in the mitigation monitoring program designed with the Navy, and WDC does not present any recommendations as to how the mitigation measures described in this document and included in the Navy's IHA may be improved such that these incidents may have been avoided.

It is also important to note that the shutdown zones were defined in an intentionally precautionary manner. Modeling of these zones using proxy source levels (see Table 3) predicted distances to the 190-dB isopleth of 4.9 and 2.1 m for impact and vibratory pile driving, respectively. The shutdown zone for impact pile driving was increased to 20 m radius on the basis of the maximum distance to the isopleth recorded during acoustic monitoring conducted during the 2011 Test Pile Project (located within the proposed EHW–2 project footprint), while the zone for vibratory driving was increased to 10 m as a strictly precautionary measure. For reference, the average radial distance to the 190-dB isopleths measured during acoustic monitoring was less than 10 m (it is generally difficult to meaningfully specify a distance to isopleths at less than 10 m) and 12 m under the IHAs issued for the Test Pile Project and for year one of the EHW–2 project, respectively (for 36-in piles). During a combined five in-water work seasons for three projects at NBKB over three calendar years (including year one of the EHW–2 project), under the same mitigation monitoring regime described here, no other observations of marine mammals within the defined shutdown zones have been recorded. We believe that placement of an observer in the optimal location for visual observation of the shutdown zone, in concert with additional observers outside the shutdown zone who may communicate animal movements with the observer assigned to the shutdown zone, is the most effective and only feasible way to prevent potential injury of marine mammals. These incidents were not predicted through the take estimation process, and we have no reason to believe that additional incidents will occur. Please see the ''Mitigation'' and ''Monitoring and Reporting'' sections below for further details. We have determined that the mitigation measures described here and included in the Navy's IHA provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat.

WDC provides additional specific concerns about the effects of the Navy's activity on transient and resident killer whales. As described in our **Federal Register** notice of proposed authorization, resident killer whales have not been observed in Hood Canal in over fifteen years, no incidental take of resident killer whales was proposed for authorization and the Navy is not authorized to incidentally take resident killer whales. Transient killer whales have most recently been observed in Hood Canal in 2003 and 2005 and, on the basis of these observations, we proposed and have authorized the incidental take of small numbers of transient killer whales. Given that transient killer whales have not been observed in Hood Canal in nine years, we believe it unlikely that the authorized levels of incidental take will actually occur but have nevertheless authorized the incidental take as a precautionary measure. WDC conflates concerns regarding the adequacy of the mitigation techniques in relation to potential injury of seals with the possibility of additional effects to killer whales. However, no cetacean has ever been observed within the WRA (possibly due to the presence of the port security barrier, approximately 600 m from the project site) and we do not believe that there is reasonable possibility of Level A harassment of any cetacean, even in the absence of the described mitigation and monitoring procedures. With regard to the potential for Level B harassment of resident killer whales, in the unlikely event that a group entered Hood Canal, existing sighting networks (e.g., Orca Network) and the high public profile of these animals mean that such an occurrence would almost certainly be well known and allow the Navy to appropriately restrict the specified activity such that take of resident killer whales would be avoided. For example, the rare occurrence of a single humpback whale in Hood Canal in 2012 was well-documented.

Comment 5: A private citizen states that we should deny the request for incidental take authorization for the following reasons: (1) failure to analyze the cumulative impacts of the Navy's sonar and noise-producing activities at NBKB; (2) failure to fully disclose project impacts; and (3) the Navy is not a citizen of the United States.

Response: 1. Section 101(a)(5)(D) of the MMPA requires NMFS to make a determination that the harassment incidental to a specified activity will have a negligible impact on the affected species or stocks of marine mammals, and will not result in an unmitigable adverse impact on the availability of marine mammals for taking for subsistence uses. Neither the MMPA nor NMFS' implementing regulations specify how to consider other activities and their impacts on the same populations. However, consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into the negligible impact analysis via their impacts on the environmental baseline (e.g., as reflected in the density/distribution and status of the species, population size and growth rate, and ambient noise).

In addition, cumulative effects were addressed in the Navy's Environmental Impact Statement, as well as in the NEPA analyses prepared for other actions conducted at the NBKB waterfront. These documents, as well as the relevant Stock Assessment Reports, are part of NMFS' Administrative Record for this action, and provided the decision-maker with information regarding other activities in the action area that affect marine mammals, an analysis of cumulative impacts, and other information relevant to the determination made under the MMPA.

2. The comment letter states that the potential exists for a future incident at the EHW–2 to result in an explosion and that, because of the follow-on potential for such a hypothetical explosion to result in the injury or death of a marine mammal, we have not fully disclosed the potential level of take that may occur. However, Section 101(a)(5)(D) of the MMPA requires that we prescribe the permissible methods of taking by harassment pursuant to the specified activity. Here, we specify that Level B harassment of certain species of marine mammal could occur incidental to the Navy's use of impact and vibratory pile driving associated with construction of

the EHW–2 during July 16, 2014, through February 15, 2015 only. We have not proposed nor authorized the take of marine mammals in any other manner or by any other means.

3. Section 101(a)(5)(D) of the MMPA allows the authorization of take incidental to a specified activity (other than commercial fishing) only when the activity is conducted by citizens of the United States. Section 3(10) of the MMPA defines the term ''person'', in part, as ''any . . . department, or instrumentality of the Federal Government . . . .'', and NMFS has defined ''U.S. citizens'' at 50 CFR 216.103 as ''individual U.S. citizens or any corporation or similar entity if it is organized under the laws of the United States . . . .'', also stating that ''U.S. Federal, state and local government agencies shall also constitute citizens of the United States . . . .'' Therefore, the U.S. Navy is appropriately considered a U.S. citizen under the MMPA.

Comment 6: A private citizen states that we should deny the Navy's request for authorization because the Navy has left equipment and hardware in the project area outside the in-water work window without addressing effects from the project outside the in-water work window.

Response: We do not approve or deny the Navy's action, or any component thereof, but rather the incidental take of marine mammals that may occur as a result of the Navy's specified activity. In this case, the specified activity includes impact and vibratory pile driving activity that may occur during July 16, 2014, through February 15, 2015 only. As allowed through other permitting or authorization processes, the Navy may conduct construction activities not considered in-water work year-round, including leaving construction equipment at the site. Although not included in the description of specified activity provided by the Navy in their request for authorization, we have no reason to believe that the presence of this equipment has any potential to result in the incidental take of marine mammals.

Description of Marine Mammals in the Area of the Specified Activity

There are eight marine mammal species with recorded occurrence in the Hood Canal during the past fifteen years, including five cetaceans and three pinnipeds. The harbor seal resides year-round in Hood Canal, while the Steller sea lion and California sea lion inhabit Hood Canal during portions of the year. Harbor porpoises may transit through the project area and occur regularly in Hood Canal, while transient killer whales could be present in the project area but do not have regular occurrence in the Hood Canal. The Dall's porpoise (*Phocoenoides dalli dalli*), humpback whale (*Megaptera novaeangliae*), and gray whale (*Eschrichtius robustus*) have been observed in Hood Canal, but their presence is sufficiently rare that we do not believe there is a reasonable likelihood of their occurrence in the project area during the proposed period of validity for this IHA. The latter three species are not carried forward for further analysis beyond this section.

Table 1 lists the marine mammal species with expected potential for occurrence in the vicinity of NBKB during the project timeframe and summarizes key information regarding stock status and abundance. We provided additional information for marine mammals with potential for occurrence in the area of the specified activity in our **Federal Register** notice of proposed authorization (79 FR 32828; June 6, 2014).

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF NBKB

Species	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR [3]	Annual M/SI [4]	Relative occurrence in Hood Canal; season of occurrence
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises) Family Delphinidae						
Killer whale	West coast transient [5 6]	-; N	243 (n/a; 2006)	2.4	0	Rare; year-round (but last observed in 2005).
Family Phocoenidae (porpoises)						
Harbor porpoise	Washington inland waters [7].	-; N	10,682 (0.38; 7,841; 2003).	63	≥2.2	Possible regular presence; year-round.
Order Carnivora—Superfamily Pinnipedia Family Otariidae (eared seals and sea lions)						
California sea lion	U.S.	-; N	296,750 (n/a; 153,337; 2008).	9,200	≥431	Seasonal/common; Fall to late spring (Aug to Jun).
Steller sea lion	Eastern U.S. [5]	-; N [8]	63,160–78,198 (n/a; 57,966; 2008–11) [9].	[10] 1,552	65.1	Seasonal/occasional; Fall to late spring (Sep to May).
Family Phocidae (earless seals)						
Harbor seal	Washington inland waters [7].	-; N	14,612 (0.15; 12,844; 1999).	771	13.4	Common; year-round resident.

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For killer whales, the abundance values represent direct counts of individually identifiable animals; therefore there is only a single abundance estimate with no associated CV. For certain stocks of pinnipeds, abundance estimates are based upon observations of animals (often pups) ashore multiplied by some correction factor derived from knowledge of the specie's (or similar species') life history to arrive at a best abundance estimate; therefore, there is no associated CV. In these cases, the minimum abundance may represent actual counts of all animals ashore.

[3] Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP).

[4] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, subsistence hunting, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value. All values presented here are from the draft 2013 SARs (*www.nmfs.noaa.gov/pr/sars/draft.htm*).

[5] Abundance estimates (and resulting PBR values) for these stocks are new values presented in the draft 2013 SARs. This information was made available for public comment and is currently under review and therefore may be revised prior to finalizing the 2013 SARs. However, we consider this information to be the best available for use in this document.

[6] The abundance estimate for this stock includes only animals from the ''inner coast'' population occurring in inside waters of southeastern Alaska, British Columbia, and Washington—excluding animals from the ''outer coast'' subpopulation, including animals from California—and therefore should be considered a minimum count. For comparison, the previous abundance estimate for this stock, including counts of animals from California that are now considered outdated, was 354.

[7] Abundance estimates for these stocks are greater than eight years old and are therefore not considered current. PBR is considered undetermined for these stocks, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimates and PBR values, as these represent the best available information for use in this document.

[8] The eastern distinct population segment of the Steller sea lion, previously listed under the ESA as threatened, was delisted on December 4, 2013 (78 FR 66140; November 4, 2013). Because this stock is not below its OSP size and the level of direct human-caused mortality does not exceed PBR, this delisting action implies that the stock is no longer designated as depleted or as a strategic stock under the MMPA.

[9] Best abundance is calculated as the product of pup counts and a factor based on the birth rate, sex and age structure, and growth rate of the population. A range is presented because the extrapolation factor varies depending on the vital rate parameter resulting in the growth rate (i.e., high fecundity or low juvenile mortality).

[10] PBR is calculated for the U.S. portion of the stock only (excluding animals in British Columbia) and assumes that the stock is not within its OSP. If we assume that the stock is within its OSP, PBR for the U.S. portion increases to 2,069.

Potential Effects of the Specified Activity on Marine Mammals

Our **Federal Register** notice of proposed authorization (79 FR 32828; June 6, 2014) provides a general background on sound relevant to the specified activity as well as a detailed description of marine mammal hearing and of the potential effects of these construction activities on marine mammals.

Anticipated Effects on Habitat

We described potential impacts to marine mammal habitat in detail in our **Federal Register** notice of proposed authorization (79 FR 32828; June 6, 2014). In summary, we have determined that given the short daily duration of sound associated with individual pile driving events and the relatively small areas being affected, pile driving activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Thus, any impacts to marine mammal habitat are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

Measurements from similar pile driving events were coupled with practical spreading loss to estimate zones of influence (ZOI; see ''Estimated Take by Incidental Harassment''). These values were then refined based on in situ measurements performed during the TPP, for similar pile driving activity and within the EHW–2 project footprint, to develop mitigation measures for EHW–2 pile driving activities. The ZOIs effectively represent the mitigation zone that will be established around each pile to prevent Level A harassment to marine mammals, while providing estimates of the areas within which Level B harassment might occur. While the ZOIs vary between the different diameter piles and types of installation methods, the Navy plans to establish mitigation zones for the maximum ZOI for all pile driving conducted in support of the wharf construction project. In addition to the measures described later in this section, the Navy will employ the following standard mitigation measures:

(a) Conduct briefings between construction supervisors and crews, marine mammal monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

(b) For in-water heavy machinery work other than pile driving (using, e.g., standard barges, tug boats, barge-mounted excavators, or clamshell equipment used to place or remove material), if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) movement of the barge to the pile location; (2) positioning of the pile on the substrate via a crane (i.e., stabbing the pile); (3) removal of the pile from the water column/substrate via a crane (i.e., deadpull); or (4) the placement of sound attenuation devices around the piles. For these activities, monitoring will take place from 15 minutes prior to initiation until the action is complete.

Monitoring and Shutdown for Pile Driving

The following measures apply to the Navy's mitigation through shutdown and disturbance zones:

Shutdown Zone—For all pile driving activities, the Navy will establish a shutdown zone intended to contain the area in which SPLs equal or exceed the 180/190 dB rms acoustic injury criteria. The purpose of a shutdown zone is to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area), thus preventing injury of marine mammals. Modeled distances for shutdown zones are shown in Table 3. However, during impact pile driving, the Navy will implement a minimum shutdown zone of 85 m radius for cetaceans and 20 m radius for pinnipeds around all pile driving activity. The modeled injury threshold distances are approximately 22 m and 5 m, respectively, but the distances are increased based on in-situ recorded sound pressure levels during the TPP.

During vibratory driving, the shutdown zone will be 10 m distance from the source for all animals. These precautionary measures are intended to further reduce any possibility of acoustic injury, as well as to account for any undue reduction in the modeled zones stemming from the assumption of 10 dB attenuation from use of a bubble curtain (see discussion later in this section).

Disturbance Zone—Disturbance zones are the areas in which SPLs equal or exceed 160 and 120 dB rms (for pulsed and non-pulsed continuous sound, respectively). Disturbance zones provide utility for monitoring conducted for mitigation purposes (i.e., shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area but outside the shutdown zone and thus prepare for potential shutdowns of activity. However, the primary purpose of disturbance zone monitoring is for documenting incidents of Level B harassment; disturbance zone monitoring is discussed in greater detail later (see ''Monitoring and Reporting''). Nominal radial distances for disturbance zones are shown in Table 3. Given the size of the disturbance zone for vibratory pile driving, it is impossible to guarantee that all animals would be observed or to make comprehensive observations of fine-scale behavioral reactions to sound, and only a portion of the zone (e.g., what may be reasonably observed by visual observers stationed within the WRA) will be monitored.

In order to document observed incidents of harassment, monitors record all marine mammal observations, regardless of location. The observer's location, as well as the location of the pile being driven, is known from a GPS. The location of the animal is estimated as a distance from the observer, which is then compared to the location from the pile. The received level may be estimated on the basis of past or subsequent acoustic monitoring. It may then be determined whether the animal was exposed to sound levels constituting incidental harassment in post-processing of observational data, and a precise accounting of observed incidents of harassment created. Therefore, although the predicted distances to behavioral harassment thresholds are useful for estimating harassment for purposes of authorizing levels of incidental take, actual take may be determined in part through the use of empirical data. That information may then be used to extrapolate observed takes to reach an approximate understanding of actual total takes.

Monitoring Protocols—Monitoring will be conducted before, during, and after pile driving activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven. Observations made outside the shutdown zone will not result in shutdown; that pile segment would be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities must be halted. Monitoring will take place from fifteen minutes prior to initiation through thirty minutes post-completion of pile driving activities. Pile driving activities include the time to remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes. Please see the Marine Mammal Monitoring Plan (available at *www.nmfs.noaa.gov/pr/permits/incidental.htm*), developed by the Navy with our approval, for full details of the monitoring protocols.

The following additional measures apply to visual monitoring:

(1) Monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Qualified observers are trained biologists, with the following minimum qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Advanced education in biological science or related field (undergraduate degree or higher required);
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

(2) Prior to the start of pile driving activity, the shutdown zone will be monitored for fifteen minutes to ensure that it is clear of marine mammals. Pile driving will only commence once observers have declared the shutdown zone clear of marine mammals; animals will be allowed to remain in the shutdown zone (i.e., must leave of their own volition) and their behavior will be monitored and documented. The shutdown zone may only be declared clear, and pile driving started, when the entire shutdown zone is visible (i.e., when not obscured by dark, rain, fog, etc.). In addition, if such conditions should arise during impact pile driving that is already underway, the activity must be halted.

(3) If a marine mammal approaches or enters the shutdown zone during the course of pile driving operations, activity will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or fifteen minutes have passed without re-detection of the animal. Monitoring will be conducted throughout the time required to drive a pile.

Sound Attenuation Devices

Sound levels can be greatly reduced during impact pile driving using sound attenuation devices, including bubble curtains. Bubble curtains were described in detail in our **Federal Register** notice of proposed authorization (79 FR 32828; June 6, 2014). To avoid loss of attenuation from design and implementation errors, the Navy has required specific bubble curtain design specifications, including testing requirements for air pressure and flow prior to initial impact hammer use, and a requirement for placement on the substrate. We considered TPP measurements (approximately 7 dB overall) and other monitored projects (typically at least 8 dB realized attenuation), and consider 8 dB as potentially the best estimate of average SPL (rms) reduction, assuming appropriate deployment and no

problems with the equipment. In looking at other monitored projects prior to completion of the TPP, the Navy determined with our concurrence that an assumption of 10 dB realized attenuation was realistic. Therefore, a 10 dB reduction was used in the Navy's analysis of pile driving noise in the initial environmental analyses for the EHW–2 project. The Navy's analysis is retained here. While acknowledging that empirical evidence from the TPP indicates that the 10 dB target has not been consistently achieved, we did not require the Navy to revisit their acoustic modeling because (1) shutdown and disturbance zones for the second and third construction years are based on in situ measurements rather than the original modeling that assumed 10 dB attenuation from a bubble curtain and (2) take estimates are not affected because they are based on a combined modeled sound field (i.e., concurrent operation of impact and vibratory drivers) rather than there being separate take estimates for impact and vibratory pile driving.

Bubble curtains shall be used during all impact pile driving. The device will distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column, and the lowest bubble ring shall be in contact with the mudline for the full circumference of the ring. Testing of the device by comparing attenuated and unattenuated strikes is not possible because of requirements in place to protect marbled murrelets (an ESA-listed bird species under the jurisdiction of the USFWS). However, in order to avoid loss of attenuation from design and implementation errors in the absence of such testing, a performance test of the device shall be conducted prior to initial use. The performance test shall confirm the calculated pressures and flow rates at each manifold ring. In addition, the contractor shall also train personnel in the proper balancing of air flow to the bubblers and shall submit an inspection/performance report to the Navy within 72 hours following the performance test.

Timing Restrictions

In Hood Canal, designated timing restrictions exist for pile driving activities to avoid in-water work when salmonids and other spawning forage fish are likely to be present. The in-water work window is July 16-February 15. Until September 23, impact pile driving will only occur starting two hours after sunrise and ending two hours before sunset due to marbled murrelet nesting season. After September 23, in-water construction activities will occur during daylight hours (sunrise to sunset).

Soft Start

The use of a soft-start procedure is believed to provide additional protection to marine mammals by warning or providing a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from vibratory hammers for fifteen seconds at reduced energy followed by a thirty-second waiting period. This procedure is repeated two additional times. Issues associated with vibratory soft start, specific to the EHW–2 project, were described in detail in our **Federal Register** notice of proposed authorization (79 FR 32828; June 6, 2014). For this IHA and for the remainder of the EHW–2 project, as a result of the potential risk to human safety, we have determined vibratory soft start to not currently be practicable. Therefore, the measure will not be required. We have further determined this measure unnecessary to providing the means of effecting the least practicable impact on marine mammals and their habitat.

For impact driving, soft start will be required, and contractors will provide an initial set of strikes from the impact hammer at reduced energy, followed by a thirty-second waiting period, then two subsequent reduced energy strike sets. The reduced energy of an individual hammer cannot be quantified because of variation in individual drivers. The actual number of strikes at reduced energy will vary because operating the hammer at less than full power results in ''bouncing'' of the hammer as it strikes the pile, resulting in multiple ''strikes.'' Soft start for impact driving will be required at the beginning of each day's pile driving work and at any time following a cessation of impact pile driving of thirty minutes or longer.

We have carefully evaluated the Navy's proposed mitigation measures and considered their effectiveness in past implementation to determine whether they are likely to effect the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) the manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals, (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation.

Any mitigation measure(s) we prescribe should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

(2) A reduction in the number (total number or number at biologically important time or location) of individual marine mammals exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(3) A reduction in the number (total number or number at biologically important time or location) of times any individual marine mammal would be exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).

(4) A reduction in the intensity of exposure to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing the severity of behavioral harassment only).

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying particular attention to the prey base, blockage or limitation of passage to or from biologically important areas, permanent destruction of habitat, or temporary disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation, an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the Navy's planned measures, including information from monitoring of the Navy's implementation of the mitigation measures as prescribed under previous IHAs for this and other projects in the Hood Canal, we have determined that the planned mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing

regulations at 50 CFR 216.104(a)(13) indicate that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Any monitoring requirement we prescribe should improve our understanding of one or more of the following:

- Occurrence of marine mammal species in action area (e.g., presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (e.g., source characterization, propagation, ambient noise); (2) Affected species (e.g., life history, dive patterns); (3) Co-occurrence of marine mammal species with the action; or (4) Biological or behavioral context of exposure (e.g., age, calving or feeding areas).
- Individual responses to acute stressors, or impacts of chronic exposures (behavioral or physiological).
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of an individual; or (2) Population, species, or stock.
- Effects on marine mammal habitat and resultant impacts to marine mammals.
- Mitigation and monitoring effectiveness.

The Navy submitted a marine mammal monitoring plan as part of the IHA application for year two of this project. It will be applied to year three of this project and can be found on the Internet at *www.nmfs.noaa.gov/pr/permits/incidental.htm.* The plan has been successfully implemented by the Navy under the previous IHA.

Visual Marine Mammal Observations

The Navy will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All observers will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. The Navy will monitor the shutdown zone and disturbance zone before, during, and after pile driving, with observers located at the best practicable vantage points. Based on our requirements, the Marine Mammal Monitoring Plan would implement the following procedures for pile driving:

- MMOs will be located at the best vantage point(s) in order to properly see the entire shutdown zone and as much of the disturbance zone as possible.
- During all observation periods, observers will use binoculars and the naked eye to search continuously for marine mammals.
- If the shutdown zones are obscured by fog or poor lighting conditions, pile driving at that location will not be initiated until that zone is visible. Should such conditions arise while impact driving is underway, the activity must be halted.
- The shutdown and disturbance zones around the pile will be monitored for the presence of marine mammals before, during, and after any pile driving or removal activity.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. Monitoring biologists will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to protocol will be coordinated between NMFS and the Navy.

Data Collection

We require that observers use approved data forms. Among other pieces of information, the Navy will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, the Navy will attempt to distinguish between the number of individual animals taken and the number of incidents of take. We require that, at a minimum, the following information be collected on the sighting forms:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (e.g., percent cover, visibility);
- Water conditions (e.g., sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Locations of all marine mammal observations; and
- Other human activity in the area.

Reporting

A draft report will be submitted within ninety calendar days of the completion of the in-water work window. The report will include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days, and will also provide descriptions of any problems encountered in deploying sound attenuating devices, any behavioral responses to construction activities by marine mammals and a complete description of all mitigation shutdowns and the results of those actions and an extrapolated total take estimate based on the number of marine mammals observed during the course of construction. A final report must be submitted within thirty days following resolution of comments on the draft report.

Monitoring Results From Previously Authorized Activities

The Navy complied with the mitigation and monitoring required under the previous authorizations for this project. Marine mammal monitoring occurred before, during, and after each pile driving event. During the course of these activities, the Navy did not exceed the take levels authorized under the IHAs. However, the Navy did record fourteen observations of marine mammals (harbor seals only) within the defined 190–dB shutdown zones. Please see the Navy's monitoring report for details of these incidents (including, specifically, Table 10). Results of acoustic monitoring from the first year of the EHW–2 project were provided in our **Federal Register** notice of proposed authorization (79 FR 32828; June 6, 2014).

During year two of the EHW–2 project, the Navy recorded four construction delays due to harbor seals observed within or near shutdown zones, and seventeen construction shutdowns, also due to harbor seals surfacing within or near shutdown zones. Of the seventeen shutdowns, the Navy was able to determine that fourteen of these involved animals surfacing within the shutdown zone. In each case, the animals were not observed approaching the zone prior to their emergence within the zone, and the Navy immediately and appropriately halted construction activity as required. With one exception, all animals were subsequently observed outside of the shutdown zone and did not exhibit behaviors consistent with injury or distress. For the one exception, the animal was not resighted and activity

was restarted after fifteen minutes, as allowed under the IHA. Twelve of the incidents occurred during impact pile driving, with animals sighted at distances between 9–20 m (mean distance approximately 16 m) from the pile at the time the shutdown was implemented. The remaining two incidents occurred during vibratory pile driving, with both animals sighted at 8 m from the pile. As noted previously under ''Comments and Responses'', the shutdown zones were defined in an intentionally precautionary manner, and it is not clear that these animals experienced any auditory injury.

In accordance with the 2012 IHA, the Navy submitted a Year 1 Marine Mammal Monitoring Report (2012–2013), covering the period of July 16 through February 15. Due to delays in beginning the project the first day of monitored pile driving activity occurred on September 28, 2012, and a total of 78 days of pile driving occurred between then and February 14, 2013. That total included 56 days of vibratory driving only, three days of only impact driving, and 19 days where both vibratory and impact driving occurred, with a maximum concurrent deployment of two vibratory drivers and one impact driver.

Monitoring was conducted in two areas: (1) primary visual surveys within the disturbance and shutdown zones in the WRA (approximately 500-m radius), (2) boat surveys outside the WRA but within the disturbance zone. The latter occurred only during acoustic monitoring accomplished at the outset of the work period, which required a small vessel be deployed outside the WRA. Marine mammal observers were placed on construction barges, the construction pier, and vessels located in near-field (within the WRA) and far-field (outside the WRA) locations, in accordance with the Marine Mammal Monitoring Plan.

Monitoring for the second year of construction was conducted throughout the 2013–14 work window (i.e., mid-July to mid-February). The monitoring was conducted in the same manner as the first year, but was limited to within the WRA as no acoustic monitoring was conducted during the second year.

Table 2 summarizes monitoring results from years one and two of the EHW–2 project, including observations from all monitoring effort (including while pile driving was not actively occurring) and records of unique observations during active pile driving (seen in the far right column). Primary surveys refer to observations by stationary and vessel-based monitors within the WRA. Boat surveys refer to vessel-based surveys conducted outside the WRA (Year 1 only). No Steller sea lions have been observed within defined ZOIs during active pile driving, and no killer whales have been observed during any project monitoring at NBKB. For more detail, including full monitoring results and analysis, please see the monitoring reports at *www.nmfs.noaa.gov/pr/permits/incidental.htm.*

TABLE 2—SUMMARY MARINE MAMMAL MONITORING RESULTS, EHW–2 YEARS 1–2

Activity [1]	Species	Total number groups observed	Total number individuals observed	Maximum group size	Total individuals observed (active pile driving and within disturbance zone only)
Primary surveys, Y1	California sea lion	30	30	1	4
	Harbor seal	939	984	4	214
Boat surveys, Y1	California sea lion	21	126	20	22
	Steller sea lion	3	3	1	0
	Harbor seal	73	76	2	22
	Harbor porpoise	10	57	10	36
Primary surveys, Y2	California sea lion	77	83	3	10
	Harbor seal	3,046	3,229	5	713

[1] Total observation effort during active pile driving: Year 1—530 hours, 50 minutes on eighty construction days; Year 2—1,247 hours, 27 minutes on 162 construction days.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: ''. . . any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.'' The former is termed Level A harassment and the latter is termed Level B harassment.

All anticipated takes would be by Level B harassment resulting from vibratory and impact pile driving and involving temporary changes in behavior. The planned mitigation and monitoring measures are expected to minimize the possibility of injurious or lethal takes such that take by Level A harassment, serious injury, or mortality is considered discountable. However, it is unlikely that injurious or lethal takes would occur even in the absence of the planned mitigation and monitoring measures.

If a marine mammal responds to a stimulus by changing its behavior (e.g., through relatively minor changes in locomotion direction/speed or vocalization behavior), the response may or may not constitute taking at the individual level, and is unlikely to affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals or on the stock or species could potentially be significant (e.g., Lusseau and Bejder, 2007; Weilgart, 2007). Given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals, it is common practice to estimate how many animals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound.

This practice potentially overestimates the numbers of marine mammals taken. For example, during the past fifteen years, killer whales have been observed within the project area twice. On the basis of that information, an estimated amount of potential takes for killer whales is presented here.

However, while a pod of killer whales could potentially visit again during the project timeframe, and thus be taken, it is more likely that they will not. Although incidental take of killer whales and Dall's porpoises was authorized for 2011–12 and 2012–13 activities at NBKB on the basis of past observations of these species, no such takes were recorded and no individuals of these species were observed. Similarly, estimated actual take levels (observed takes extrapolated to the remainder of unobserved but ensonified area) were significantly less than authorized levels of take for the remaining species. In addition, it is often difficult to distinguish between the individuals harassed and incidences of harassment. In particular, for stationary activities, it is more likely that some smaller number of individuals may accrue a number of incidences of harassment per individual than for each incidence to accrue to a new individual, especially if those individuals display some degree of residency or site fidelity and the impetus to use the site (e.g., because of foraging opportunities) is stronger than the deterrence presented by the harassing activity.

The project area is not believed to be particularly important habitat for marine mammals, nor is it considered an area frequented by marine mammals, although harbor seals are year-round residents of Hood Canal and sea lions are known to haul-out on submarines and other man-made objects at the NBKB waterfront (although typically at a distance of a mile or greater from the project site). Therefore, behavioral disturbances that could result from anthropogenic sound associated with these activities are expected to affect only a relatively small number of individual marine mammals, although those effects could be recurring over the life of the project if the same individuals remain in the project vicinity.

The Navy requested authorization for the incidental taking of small numbers of Steller sea lions, California sea lions, harbor seals, transient killer whales, and harbor porpoises in the Hood Canal that may result from pile driving during construction activities associated with the wharf construction project described previously in this document. In order to estimate the potential incidents of take that may occur incidental to the specified activity, we first estimated the extent of the sound field that may be produced by the activity and then considered that in combination with information about marine mammal density or abundance in the project area. We provided detailed information on applicable sound thresholds for determining effects to marine mammals as well as describing the information used in estimating the sound fields, the available marine mammal density or abundance information, and the method of estimating potential incidences of take, in our **Federal Register** notice of proposed authorization (79 FR 32828; June 6, 2014). That information is unchanged, and our take estimates were calculated in the same manner and on the basis of the same information as what was described in the **Federal Register** notice. Modeled distances to relevant thresholds are shown in Table 3 and total estimated incidents of take are shown in Table 4. Please see **Federal Register** notice of proposed authorization (79 FR 32828; June 6, 2014) for full details of the process and information used in the take estimation process.

TABLE 3—CALCULATED DISTANCE(S) TO AND AREA ENCOMPASSED BY UNDERWATER MARINE MAMMAL SOUND THRESHOLDS DURING PILE INSTALLATION

Threshold	Distance [1]	Area (km^2)
Impact driving, pinniped injury (190 dB)	4.9 m	0.0001
Impact driving, cetacean injury (180 dB)	22 m	0.002
Impact driving, disturbance (160 dB) [2]	724 m	1.65
Vibratory driving, pinniped injury (190 dB)	2.1 m	< 0.0001
Vibratory driving, cetacean injury (180 dB)	10 m	0.0003
Vibratory driving, disturbance (120 dB) [3]	13,800 m	41.4

[1] SPLs used for calculations were: 185 dB for impact and 180 dB for vibratory driving.
[2] Area of 160-dB zone presented for reference. Estimated incidental take calculated on basis of larger 120-dB zone.
[3] Hood Canal average width at site is 2.4 km, and is fetch limited from N to S at 20.3 km. Calculated range (over 222 km) is greater than actual sound propagation through Hood Canal due to intervening land masses. The greatest line-of-sight distance from pile driving locations unimpeded by land masses is 13.8 km (i.e., the maximum possible distance for propagation of sound).

Hood Canal does not represent open water, or free field, conditions. Therefore, sounds would attenuate as they encounter land masses or bends in the canal. As a result, the calculated distance and areas of impact for the 120-dB threshold cannot actually be attained at the project area. See Figure 6–1 of the Navy's application for a depiction of the size of areas in which each underwater sound threshold is predicted to occur at the project area due to pile driving.

TABLE 4—NUMBER OF POTENTIAL INCIDENTAL TAKES OF MARINE MAMMALS WITHIN VARIOUS ACOUSTIC THRESHOLD ZONES

Species	Density	Level A	Level B (120 dB) [1]	Total proposed authorized takes [2]
California sea lion	[3]34	0	6,630	6,630
Steller sea lion	[3]2	0	585	585
Harbor seal	1.06	0	8,580	8,580
Killer whale (transient)	n/a	0	180	[4]180
Harbor porpoise	0.149	0	1,170	1,170

[1] The 160-dB acoustic harassment zone associated with impact pile driving would always be subsumed by the 120-dB harassment zone produced by vibratory driving. Therefore, takes are not calculated separately for the two zones.

[2] For species with associated density, density was multiplied by largest ZOI (i.e., 41.4 km). The resulting value was rounded to the nearest whole number and multiplied by the 195 days of activity. For species with abundance only, that value was multiplied directly by the 195 days of activity. We assume for reasons described earlier that no takes would result from airborne noise.

[3] Figures presented are abundance numbers, not density, and are calculated as the average of average daily maximum numbers per month. Abundance numbers are rounded to the nearest whole number for take estimation. The Steller sea lion abundance was increased to three for take estimation purposes.

[4] We assumed that a single pod of six killer whales could be present for as many as 30 days of the duration.

Analyses and Determinations

Negligible Impact Analysis

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, we consider other factors, such as the likely nature of any responses (e.g., intensity, duration), the context of any responses (e.g., critical reproductive time or location, migration), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

Pile driving activities associated with the wharf construction project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from underwater sounds generated from pile driving. Potential takes could occur if individuals of these species are present in the ensonified zone when pile driving is happening, which is likely to occur because (1) harbor seals, which are frequently observed along the NBKB waterfront, are present within the WRA; (2) sea lions, which are less frequently observed, transit the WRA en route to haul-outs to the south at Delta Pier; or (3) cetaceans or pinnipeds transit the larger Level B harassment zone outside of the WRA.

No injury, serious injury, or mortality is anticipated given the methods of installation and measures designed to minimize the possibility of injury to marine mammals. The potential for these outcomes is minimized through the construction method and the implementation of the planned mitigation measures. Specifically, vibratory hammers will be the primary method of installation, and this activity does not have significant potential to cause injury to marine mammals due to the relatively low source levels produced (likely less than 180 dB rms) and the lack of potentially injurious source characteristics. Impact pile driving produces short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks. When impact driving is necessary, required measures (use of a sound attenuation system, which reduces overall source levels as well as dampening the sharp, potentially injurious peaks, and implementation of shutdown zones) significantly reduce any possibility of injury. Given sufficient ''notice'' through use of soft start (for impact driving), marine mammals are expected to move away from a sound source that is annoying prior to its becoming potentially injurious. The likelihood that marine mammal detection ability by trained observers is high under the environmental conditions described for Hood Canal further enables the implementation of shutdowns to avoid injury, serious injury, or mortality.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from past projects at NBKB, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. In response to vibratory driving, harbor seals (which may be somewhat habituated to human activity along the NBKB waterfront) have been observed to orient towards and sometimes move towards the sound. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in fitness to those individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the project area while the activity is occurring.

For pinnipeds, no rookeries are present in the project area, there are no haul-outs other than those provided opportunistically by man-made objects, and the project area is not known to provide foraging habitat of any special importance (other than is afforded by the known migration of salmonids generally along the Hood Canal shoreline). No cetaceans are expected within the WRA. The pile driving activities analyzed here are similar to other nearby construction activities within the Hood Canal, including recent projects conducted by the Navy at the same location (TPP and EHW–1 pile replacement project, Years 1–2 of EHW–2; barge mooring project) as well as work conducted in 2005 for the Hood Canal Bridge (SR–104) by the Washington State Department of Transportation, which have taken place with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment.

In summary, this negligible impact analysis is founded on the following factors: (1) The possibility of injury, serious injury, or mortality may reasonably be considered discountable; (2) the anticipated incidences of Level B harassment consist of, at worst, temporary modifications in behavior; (3) the absence of any major rookeries and only a few isolated and opportunistic haul-out areas near or adjacent to the project site; (4) the absence of cetaceans within the WRA and generally sporadic occurrence outside the WRA; (5) the absence of any other known areas or features of special significance for foraging or reproduction within the project area; and (6) the presumed efficacy of the planned mitigation measures in reducing the effects of the specified activity to the level of least practicable impact. In addition, none of these stocks are listed under the ESA or designated as depleted under the MMPA. All of the stocks for which take is authorized are thought to be increasing or to be within OSP size. In

combination, we believe that these factors, as well as the available body of evidence from other similar activities, including those conducted at the same time of year and in the same location, demonstrate that the potential effects of the specified activity will have only short-term effects on individuals. The specified activity is not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, we find that the total marine mammal take from Navy's wharf construction activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers Analysis

The numbers of animals authorized to be taken for Steller and California sea lions would be considered small relative to the relevant stocks or populations (less than one percent for Steller sea lions and less than three percent for California sea lions) even if each estimated taking occurred to a new individual—an extremely unlikely scenario. For pinnipeds occurring at the NBKB waterfront, there will almost certainly be some overlap in individuals present day-to-day. Further, for the pinniped species, these takes could potentially occur only within some small portion of the overall regional stock. For example, of the estimated 296,500 California sea lions, only certain adult and subadult males—believed to number approximately 3,000–5,000 by Jeffries *et al.* (2000)—travel north during the non-breeding season. That number has almost certainly increased with the population of California sea lions—the 2000 SAR for California sea lions reported an estimated population size of 204,000–214,000 animals—but likely remains a relatively small portion of the overall population.

For harbor seals, animals found in Hood Canal belong to a closed, resident population estimated at approximately 1,000 animals by Jeffries *et al.* (2003), and takes are likely to occur only within some portion of that closed population, rather than to animals from the Washington inland waters stock as a whole. The animals that are resident to Hood Canal, to which any incidental take would accrue, represent only seven percent of the best estimate of regional stock abundance. For transient killer whales, we estimate take based on an assumption that a single pod of whales, comprising six individuals, is present in the vicinity of the project area for the entire duration of the project. These six individuals represent a small number of transient killer whales, for which a conservative minimum estimate of 243 animals is given in the draft 2013 SAR.

Little is known about harbor porpoise use of Hood Canal, and prior to monitoring associated with recent pile driving projects at NBKB, it was believed that harbor porpoises were infrequent visitors to the area. It is unclear from the limited information available what relationship harbor porpoise occurrence in Hood Canal may hold to the regional stock or whether similar usage of Hood Canal may be expected to be recurring. It is unknown how many unique individuals are represented by sightings in Hood Canal, although it is unlikely that these animals represent a large proportion of the overall stock. While we believe that the authorized numbers of incidental take would be likely to occur to a much smaller number of individuals, the number of incidents of take relative to the stock abundance (approximately eleven percent) remains within the bounds of what we consider to be small numbers.

As summarized here, the estimated numbers of potential incidents of harassment for these species are likely much higher than will realistically occur. This is because (1) we use the maximum possible number of days (195) in estimating take, despite the fact that multiple delays and work stoppages are likely to result in a lower number of actual pile driving days; (2) sea lion estimates rely on the averaged maximum daily abundances per month, rather than simply an overall average which would provide a much lower abundance figure; and (3) the estimates for transient killer whales use sparse information to attempt to account for the potential presence of species that have not been observed in Hood Canal since 2005. In addition, potential efficacy of mitigation measures in terms of reduction in numbers and/or intensity of incidents of take has not been quantified. Therefore, these estimated take numbers are likely to be precautionary. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, we find that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, we have determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

No marine mammal species listed under the ESA are expected to be affected by these activities. Therefore, we have determined that a section 7 consultation under the ESA is not required.

National Environmental Policy Act (NEPA)

In compliance with the NEPA of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (CEQ; 40 CFR parts 1500–1508), the Navy prepared an Environmental Impact Statement (EIS) and issued a Record of Decision (ROD) for this project. We acted as a cooperating agency in the preparation of that document, and reviewed the EIS and the public comments received and determined that preparation of additional NEPA analysis was not necessary. In compliance with NEPA, the CEQ regulations, and NOAA Administrative Order 216–6, we subsequently adopted the Navy's EIS and issued our own ROD for the issuance of the first IHA on July 6, 2012, and reaffirmed the ROD before issuing a second IHA in 2013.

We have reviewed the Navy's application for a renewed IHA for ongoing construction activities for 2014–15 and the 2013–14 monitoring report. Based on that review, we have determined that the proposed action is very similar to that considered in the previous IHAs. In addition, no significant new circumstances or information relevant to environmental concerns have been identified. Thus, we have determined that the preparation of a new or supplemental NEPA document is not necessary, and, after review of public comments, reaffirm our 2012 ROD. The 2012 NEPA documents are available for review at *www.nmfs.noaa.gov/pr/permits/incidental.htm.*

Authorization

As a result of these determinations, we have issued an IHA to the Navy for conducting the described wharf construction activities in the Hood Canal, from July 16, 2014 through

February 15, 2015, provided the previously described mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 16, 2014.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–17451 Filed 7–24–14; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: 8/25/2014.

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:

Additions

On 6/6/2014 (79 FR 32716–32718), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 USC 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 organizations that will furnish the products to the Government.

2. The action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 USC 8501–8506) in connection with the products proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products are added to the Procurement List:

Products

Battery
- NSN: 6135–01–372–5191—NEDA 1811A, Non-Rechargeable, 12.0V, Alkaline-Manganese Dioxide Zinc
- NSN: 6135–01–174–8057—NEDA 1166A, Non-Rechargeable, 1.5V, Alkaline-Manganese Dioxide
- NSN: 6140–01–413–3926—NEDA 1.2H2, Rechargeable, 1.2V, Nickel-Metal Hydride, PG/4
- NSN: 6140–01–467–3225—NEDA 1.2H2, Rechargeable, 1.2V, Nickel-Metal Hydride, PG/2
- NSN: 6135–01–394–8087—NEDA 1168A, Non-Rechargeable, 1.5V, Alkaline-Manganese Dioxide
- NSN: 6135–01–268–2151—NEDA 1414A, Non-Rechargeable, 6.0V, Alkaline-Manganese Dioxide
- NSN: 6135–01–314–8415—NEDA 5000LC, Non-Rechargeable, 3.0V, Lithium
- NSN: 6135–01–526–6530—NEDA 5003LC, Non-Rechargeable, 3.0V, Lithium-Manganese Dioxide
- NSN: 6135–01–210–8715—NEDA 5004LC, Non-Rechargeable, 3.0V, Lithium-Manganese Dioxide
- NSN: 6135–01–320–4815—NEDA 5011LC, Non-Rechargeable, 3.0V, Lithium
- NSN: 6135–01–263–3611—NEDA 5012LC, Non-rechargeable, 3.0V, Lithium-Manganese Dioxide
- NSN: 6135–01–522–2463—NEDA 5021LC, Non-Rechargeable, 3.0V, Lithium Manganese Dioxide
- NSN: 6135–01–462–4007—NEDA 5032LC, Non-Rechargeable, 6.0V, Lithium-Manganese Dioxide
- NSN: 6135–01–534–0310—NEDA 5046LC, Non-Rechargeable, 3.0V, Lithium-Manganese Dioxide
- NSN: 6135–01–138–8157—NEDA 7003ZD, Non-Rechargeable, 1.4V, Zinc Air
- NSN: 6135–01–586–4220—NEDA 5018LC, Non-Rechargeable, 3.0V, Lithium Photo
- NPA: Eastern Carolina Vocational Center, Inc., Greenville, NC

Contracting Activity: Defense Logistics Agency Land and Maritime, Columbus, OH

Coverage: C-List for 100% of the requirement of the Department of Defense, as aggregated by the Defense Logistics Agency Land and Maritime, Columbus, OH.
- NSN: 8540–00–NIB–0093—Tissue, Toilet, 1-Ply, White, 96 Rolls
- NSN: 8540–00–NIB–0094—Tissue, Toilet, 2-Ply, 4″ x 3.75″, White, 96 Rolls

ADDITIONAL INFORMATION. In accordance with 41 CFR 51–5.3, Scope of Requirement, when a product is included on the Procurement List, the mandatory source requirement covers the National Stock Number (NSN) or item designation listed and products that are essentially-the-same (ETS) as the listed item(s). To determine ETS products for the two NSNs identifying the toilet tissue hereby added to the Procurement List, the US AbilityOne Commission reviewed facts/positions and Business Case Analyses provided by the General Services Administration and National Industries for the Blind. As a result of the review, the following commercial products are designated as ETS to the NSNs being included on Procurement List.

8540–00–NIB–0094—Toilet Tissue, 2-ply, Standard Rolls, 4x3.75″, 500 sheets/roll, BX=96 rolls
- WIN/WNS2200—Windsoft, 2-ply, 4.5x4.5″, 500 sheets/roll, BX=96 rolls
- SCA/TM1616—Tork Universal, 2-ply, 4.5x3.8″, 500 sheets/roll, BX=96 rolls
- SCA/TM1616S—Tork Universal, 2-ply, 4x3.8″, 500 sheets/roll, BX=96 rolls
- SCA/TM6120S—Tork Advanced, 2-ply, 4x3.8″, 500 sheets/roll, BX=96 rolls
- BWK6150—Boardwalk, 2-ply, 4.5x3.75″, 500 sheets/roll, BX=96 rolls
- BWK6180—Boardwalk, 2-ply, 4.5x3″, 500 sheets/roll, BX=96 rolls
- BWK6155—Boardwalk, 2-ply, 4.5x4.5″, 500 sheets/roll, BX=96 rolls
- WAU54900—Eco Soft Green Seal, 2-ply, 4.375x3.75″, 500 sheets/roll, BX=96 rolls
- WAU50000—Eco Soft, 2-ply, 4x4.5″, 500 sheets/roll, BX=96 rolls
- WAU54000—Eco Soft, 2-ply, 4.375x3.75″, 500 sheets/roll, BX=96 rolls
- APM280GREEN—Green Heritage, 2-ply, 4.5x4.5″, 500 sheets/rolls, BX=96 rolls
- APM235GREEN—Green Heritage, 2-ply, 4.5x3.5″, 500 sheets/rolls, BX=96 rolls
- APM276GREEN—Green Heritage, 2-ply, 4.1x3.1″, 500 sheets/rolls, BX=96 rolls
- APM248GREEN—Green Heritage, 2-ply, 4.1x3.1″, 400 sheets/rolls, BX=96 rolls
- GEN201—GEN, 2-ply, 4.2x3.2″, 500 sheets/roll, BX=96 rolls
- GEN238—GEN, 2-ply, 4.5x3.5″, 500 sheets/roll, BX=96 rolls
- GEN500—GEN, 2-ply, 4.5x3.5″, 500 sheets/roll, BX=96 rolls
- GEN502—GEN, 2-ply, 500 sheets/roll, BX=96 rolls
- NOR 880199—Carlyle, 2-ply, 4.5x3.75″, 500 sheets/roll, BX=96 rolls
- S–7131—Uline, 2-ply, 4.5x3.75″, 500 sheets/roll, BX=96 rolls
- 422604/2033722/1150944—Reliable, 2-ply, 3.75x4.5″, 500 sheets/roll, BX=96 rolls

8540–00–NIB–0093—Toilet Tissue, 1-ply, Standard Rolls, 4x3.75″, 1000 sheets/roll, BX=96 rolls
- 851101—Clean & Soft, 1-ply, 4.4x4.4″, 1000 sheets/roll, BX=96 rolls
- APM115GREEN—Green Heritage, 1-ply, 4.1x3.1″, 1000 sheets/roll, BX=96 rolls
- WNS/WIN2210—Windsoft, 1-ply, 4.5x4.1″, 1000 sheets/roll, BX=96 rolls

GEN215—GEN, 1-ply, 4.5x3″, 1000 sheets/roll, BX=96 rolls
GEN218—GEN, 1-ply, 4.5x3.5″, 1000 sheets/roll, BX=96 rolls
MORMS1000—Morcon, 1-ply, 4.25x3.625″, 1000 sheets/roll, BX=96 rolls
NPA: Outlook-Nebraska, Inc., Omaha, NE
Contracting Activity: General Services Administration, New York, NY
Coverage: A-List for the Total Government Requirement as aggregated by the General Services Administration, New York, NY.

Patricia Briscoe,

Deputy Director, Business Operations, Pricing and Information Management.

[FR Doc. 2014–17566 Filed 7–24–14; 8:45 am]

BILLING CODE 6353–01–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 services to the Procurement List that will be provided by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes a service previously provided by such agency.

Comments Must Be Received On Or Before: 8/25/2014.

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 USC 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 services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Assembly, Kitting, Warehousing and Fulfillment Service National Park Service, Interpretation and Education Division 1849 C Street NW., Washington, DC
NPA: Industries for the Blind, Inc., West Allis, WI
Contracting Activity: Dept of the Interior, National Park Service, NCR Regional Contracting, Washington, DC

Service Type/Location: Custodial Service, FAA, Merrill Field Air Traffic Control Tower, 1950 East Fifth Avenue, Anchorage, AK
NPA: M. C. Resource Management, Anchorage, AK
Contracting Activity: Dept of Transportation, Federal Aviation Administration, Renton, WA

Deletion

The following service is proposed for deletion from the Procurement List:

Service:

Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, 1001 W. DeYoung Street, Marion, IL
NPA: The H Group, B.B.T. Inc., West Frankfurt, IL
Contracting Activity: Dept of the Army, W6QM MICC–ARCC NORTH, Fort McCoy, WI

Patricia Briscoe,

Deputy Director, Business Operations, Pricing and Information Management.

[FR Doc. 2014–17567 Filed 7–24–14; 8:45 am]

BILLING CODE 6353–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) are minimized, collection instruments are clearly understood, and the impact of collection on respondents can be properly assessed.

Currently, CNCS is soliciting comments concerning its proposed renewal of the Award Transfer forms: Request to Transfer a Segal Education Award Amount, Accept/Decline Award Transfer Form, Request to Revoke Transfer of Education Award Form, and Rescind Acceptance of Award Transfer Form. These forms enable AmeriCorps members and recipients of the Segal Education Award to meet the legal requirements of the award transfer process. Copies of the information collection request can be obtained by contacting the office listed in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by August 25, 2014.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) Electronically through *www.regulations.gov.*

(2) By mail sent to: Corporation for National and Community Service, National Service Trust, Attention: Nahid Jarrett, 8304B, 1201 New York Avenue NW., Washington, DC 20525.

(3) By hand delivery or by courier to the CNCS mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.

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.

FOR FURTHER INFORMATION CONTACT: Nahid Jarrett, 202–606–6753, or by email at *njarrett@cns.gov.*

SUPPLEMENTARY INFORMATION: CNCS is particularly interested in comments that:

- 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including 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).

Background

AmeriCorps members may offer to transfer all or part of their qualified education awards to certain family members. Provision is made to accept the transfer or not, rescind acceptance, or revoke the transfer. These processes are implemented electronically where possible but paper forms are available if necessary.

Current Action

CNCS seeks to renew the current information. We are adding the categories of stepchild and step-grandchild to the list of qualified recipients of the award transfer. Aside from this change, some minor formatting and editing revisions have been made.

The information collection will otherwise be used in the same manner as the existing application. CNCS also seeks to continue using the current forms until the revised forms are approved by OMB. The current information collection is due to expire on July 16, 2014.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Request to Transfer a Segal Education Award Amount, Accept/Decline Award Transfer Form, Request to Revoke Transfer of Education Award Form, and Rescind Acceptance of Award Transfer Form.

OMB Number: 3045–0136.

Agency Number: None.

Affected Public: AmeriCorps members with eligible education awards and qualified recipients.

Total Respondents: 1420.

Frequency: Annually.

Average Time per Response: Averages 5 minutes.

Estimated Total Burden Hours: 118.33.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 22, 2014.

Maggie Taylor-Coates,

Chief of Trust Operations.

[FR Doc. 2014–17582 Filed 7–24–14; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of Defense (DoD) Civilian Physicians and Dentists Clinical Specialties and Tables

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: As required by the Department of Veterans Affairs Health Care Personnel Enhancement Act of 2004 and in conjunction with the 2012 Delegation Agreement between the Office of Personnel Management (OPM) and the Department of Defense (DoD), the Defense Civilian Personnel Advisory Service (DCPAS) is hereby giving notice of specialty additions and revisions, as well as the addition of pay table six from the Department of Veterans Affairs (VA) structure revised as contained herein for DoD physicians and dentists. These revisions are intended to enhance the flexibility of the DoD to recruit, develop, and retain the most highly qualified providers to serve our nation's active duty members and their families and maintain a standard of excellence in the DoD healthcare system.

DATES: *Effective Dates:* Revisions are effective on September 23, 2014.

FOR FURTHER INFORMATION CONTACT: Additional information may be obtained by writing to the Compensation Division, Defense Civilian Personnel Advisory Service, Department of Defense, 4800 Mark Center Drive, Alexandria, VA 22350–1100.

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 7431(e)(1)(C), amounts prescribed under paragraph 7431(e) shall be published in the **Federal Register**, and shall not take effect until at least 60 days after date of publication.

Background

The ''Department of Veterans Affairs Health Care Personnel Enhancement Act of 2004'' (Pub. L. 108–445) was signed by the President on December 3, 2004. The major provisions of the law established a new pay system for Veterans Health Administration (VHA) physicians and dentists. In 2012, OPM re-delegated authority to DoD to continue utilizing a portion of Title 38 provisions for DoD civilian physicians and dentists. In accordance with the aforementioned governing documents, DCPAS is submitting revisions contained herein as a **Federal Register** notice.

Discussion

DoD reviews and adopts the VHA tables and tiers including the minimums and maximums as they are revised by VHA (**note:** the VHA table 7 is adopted as DoD table 5). While VHA and DoD have similar specialties, there are specialties unique to DoD. In coordination with VHA and OPM, DoD is adding specialties and revising original placement of DoD specific specialties within the table structure, signified below in *Italics* followed by *[New]*or *[Moved from Table X].* DoD is also adopting VHA's pay table six, Executive Assignments (as contained herein), with minor changes. Differences include a two tier rather than three tier structure, inverse pay minimums and maximums to maintain consistency with the structure of DoD Tables one—five, and removal of VA specific job titles replaced with DoD equivalent job titles.

PAY TABLE 1—CLINICAL SPECIALTIES COVERED

Allergy & Immunization
Endocrinology
Endodontics
Family Practice
General Dentistry
General Practice
Geriatrics
Hospitalist
Infectious Diseases
Internal Medicine
Neurology
Pediatrics
Periodontics
Preventive Medicine
Primary Care
Prosthodontics
Psychiatry
Rheumatology
Other Assignments (Specialties not listed for tables 2–4)

PAY TABLE 2—CLINICAL SPECIALTIES COVERED

Aerospace Medicine [Moved From Table One]

Critical Care—Board Certified
Emergency Medicine
Gynecology
Hematology-Oncology
Nephrology
Obstetrics

Occupational Medicine [Moved From Table One]

Pathology
Physical Medicine & Rehabilitation/Physiatry/Spinal Cord Injury
Pulmonary

Undersea Medicine [Moved From Table One]

PAY TABLE 3—CLINICAL SPECIALTIES COVERED

Cardiology—Non-Invasive
Dermatology
Gastroenterology

Nuclear Medicine

Obstetrics/Gynecology [New]

Ophthalmology
Oral Surgery
Otolaryngology

PAY TABLE 4—CLINICAL SPECIALTIES COVERED

Anesthesiology
Colorectal Surgery
General Surgery
Plastic Surgery
Radiation Oncology
Radiology
Refractive Surgery
Therapeutic Radiology
Trauma/Critical Care Surgery
Urology
Urologic Surgery
Vascular Surgery

PAY TABLE 5—CLINICAL SPECIALTIES COVERED

Cardiology—Interventionalist
Cardio-Thoracic Surgery
Neurosurgery
Orthopedic Surgery
Radiology—Interventionalist

PAY TABLE 6—COVERED EXECUTIVE ASSIGNMENTS

Clinic Directors/Managers/Chiefs [New]
Deputy Chief of Operations [New]
Headquarters Physicians/Dentists [New]
International Program Directors/ Managers [New]
Medical/Dental Center Directors/ Managers [New]
Principal Deputy [New]
Program Directors/Managers [New]
Research/Development Directors/ Managers [New]

Dated: July 21, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–17490 Filed 7–24–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: Defense Travel Management Office, DoD.

ACTION: Notice of Revised Non-Foreign Overseas Per Diem Rates.

SUMMARY: The Defense Travel Management Office is publishing Civilian Personnel Per Diem Bulletin Number 294. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States when applicable. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 294 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

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

FOR FURTHER INFORMATION CONTACT: Ms. Sonia Malik, 571–372–1276.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Defense Travel Management Office for non-foreign areas outside the contiguous United States. It supersedes Civilian Personnel Per Diem Bulletin Number 293. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. Civilian Bulletin 294 includes updated rates for the Northern Mariana Islands.

Dated: July 22, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA						
[OTHER]						
01/01 - 12/31	110		118		228	01/01/2013
ADAK						
01/01 - 12/31	192		69		261	07/01/2014
ANCHORAGE [INCL NAV RES]						
05/16 - 09/30	190		102		292	12/01/2013
10/01 - 05/15	99		93		192	12/01/2013
BARROW						
05/15 - 09/14	177		94		271	04/01/2013
09/15 - 05/14	159		93		252	04/01/2013
BETHEL						
01/01 - 12/31	179		109		288	12/01/2013
BETTLES						
01/01 - 12/31	175		83		258	06/01/2014
CLEAR AB						
01/01 - 12/31	90		82		172	10/01/2006
COLDFOOT						
01/01 - 12/31	165		70		235	10/01/2006
COPPER CENTER						
05/15 - 09/15	149		85		234	01/01/2013
09/16 - 05/14	99		80		179	01/01/2013
CORDOVA						
01/01 - 12/31	95		102		197	12/01/2013
CRAIG						
04/01 - 09/30	129		77		206	06/01/2014
10/01 - 03/31	85		72		157	06/01/2014
DEADHORSE						
01/01 - 12/31	170		70		240	05/01/2014
DELTA JUNCTION						
01/01 - 12/31	128		54		182	12/01/2013

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
DENALI NATIONAL PARK						
05/01 - 09/30	159		94		253	12/01/2013
10/01 - 04/30	89		87		176	12/01/2013
DILLINGHAM						
05/15 - 10/15	185		111		296	01/01/2011
10/16 - 05/14	169		109		278	01/01/2011
DUTCH HARBOR-UNALASKA						
01/01 - 12/31	121		102		223	02/01/2012
EARECKSON AIR STATION						
01/01 - 12/31	90		77		167	06/01/2007
EIELSON AFB						
05/15 - 09/15	154		96		250	01/01/2013
09/16 - 05/14	75		88		163	01/01/2013
ELFIN COVE						
05/15 - 09/10	175		46		221	01/01/2013
09/11 - 05/14	150		44		194	01/01/2013
ELMENDORF AFB						
05/16 - 09/30	190		102		292	12/01/2013
10/01 - 05/15	99		93		192	12/01/2013
FAIRBANKS						
09/16 - 05/14	75		88		163	01/01/2013
05/15 - 09/15	154		96		250	01/01/2013
FOOTLOOSE						
01/01 - 12/31	175		18		193	10/01/2002
FT. GREELY						
01/01 - 12/31	128		54		182	12/01/2013
FT. RICHARDSON						
05/16 - 09/30	190		102		292	12/01/2013
10/01 - 05/15	99		93		192	12/01/2013
FT. WAINWRIGHT						
05/15 - 09/15	154		96		250	01/01/2013
09/16 - 05/14	75		88		163	01/01/2013
GAMBELL						
01/01 - 12/31	137		59		196	06/01/2014

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
GLENNALLEN						
05/15 - 09/15	149		85		234	01/01/2013
09/16 - 05/14	99		80		179	01/01/2013
HAINES						
01/01 - 12/31	107		101		208	01/01/2011
HEALY						
10/01 - 04/30	89		87		176	12/01/2013
05/01 - 09/30	159		94		253	12/01/2013
HOMER						
05/05 - 09/16	159		99		258	12/01/2013
09/17 - 05/04	89		92		181	12/01/2013
JUNEAU						
05/16 - 09/15	159		104		263	12/01/2013
09/16 - 05/15	135		102		237	12/01/2013
KAKTOVIK						
01/01 - 12/31	165		86		251	10/01/2002
KAVIK CAMP						
01/01 - 12/31	200		65		265	06/01/2014
KENAI-SOLDOTNA						
05/01 - 10/31	99		110		209	01/01/2013
11/01 - 04/30	79		108		187	01/01/2013
KENNICOTT						
01/01 - 12/31	275		109		384	01/01/2013
KETCHIKAN						
05/01 - 09/30	135		88		223	01/01/2013
10/01 - 04/30	99		85		184	01/01/2013
KING SALMON						
05/01 - 10/01	225		91		316	10/01/2002
10/02 - 04/30	125		81		206	10/01/2002
KLAWOCK						
04/01 - 09/30	129		77		206	06/01/2014
10/01 - 03/31	85		72		157	06/01/2014
KODIAK						
05/01 - 09/30	152		93		245	02/01/2012

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
10/01 - 04/30	100		88		188	02/01/2012
KOTZEBUE						
01/01 - 12/31	219		115		334	02/01/2012
KULIS AGS						
05/16 - 09/30	190		102		292	12/01/2013
10/01 - 05/15	99		93		192	12/01/2013
MCCARTHY						
01/01 - 12/31	275		109		384	01/01/2013
MCGRATH						
01/01 - 12/31	160		82		242	07/01/2014
MURPHY DOME						
05/15 - 09/15	154		96		250	01/01/2013
09/16 - 05/14	75		88		163	01/01/2013
NOME						
01/01 - 12/31	150		132		282	01/01/2013
NUIQSUT						
01/01 - 12/31	250		70		320	07/01/2014
PETERSBURG						
01/01 - 12/31	110		118		228	01/01/2013
POINT HOPE						
01/01 - 12/31	181		81		262	06/01/2014
POINT LAY						
01/01 - 12/31	265		72		337	07/01/2014
PORT ALEXANDER						
01/01 - 12/31	150		43		193	08/01/2010
PORT ALSWORTH						
01/01 - 12/31	135		88		223	10/01/2002
PRUDHOE BAY						
01/01 - 12/31	170		70		240	05/01/2014
SELDOVIA						
05/05 - 09/16	159		99		258	12/01/2013
09/17 - 05/04	89		92		181	12/01/2013
SEWARD						
10/16 - 04/30	84		85		169	01/01/2013

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
05/01 - 10/15	174		94		268	01/01/2013
SITKA-MT. EDGECUMBE						
10/01 - 04/30	169		113		282	01/01/2013
05/01 - 09/30	209		117		326	01/01/2013
SKAGWAY						
05/01 - 09/30	135		88		223	01/01/2013
10/01 - 04/30	99		85		184	01/01/2013
SLANA						
05/01 - 09/30	139		55		194	02/01/2005
10/01 - 04/30	99		55		154	02/01/2005
SPRUCE CAPE						
05/01 - 09/30	152		93		245	02/01/2012
10/01 - 04/30	100		88		188	02/01/2012
ST. GEORGE						
01/01 - 12/31	220		51		271	05/01/2014
TALKEETNA						
01/01 - 12/31	100		89		189	10/01/2002
TANANA						
01/01 - 12/31	150		132		282	01/01/2013
TOK						
10/01 - 05/14	85		84		169	01/01/2013
05/15 - 09/30	95		85		180	01/01/2013
UMIAT						
01/01 - 12/31	350		64		414	02/01/2012
VALDEZ						
05/16 - 09/14	219		121		340	01/01/2013
09/15 - 05/15	139		113		252	01/01/2013
WAINWRIGHT						
01/01 - 12/31	175		83		258	01/01/2011
WASILLA						
05/01 - 09/30	164		103		267	01/01/2013
10/01 - 04/30	96		96		192	01/01/2013
WRANGELL						
05/01 - 09/30	135		88		223	01/01/2013

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
10/01 - 04/30	99		85		184	01/01/2013
YAKUTAT						
01/01 - 12/31	105		94		199	01/01/2011
AMERICAN SAMOA						
AMERICAN SAMOA						
01/01 - 12/31	139		96		235	09/01/2012
GUAM						
GUAM (INCL ALL MIL INSTAL)						
01/01 - 12/31	159		84		243	12/01/2013
HAWAII						
[OTHER]						
07/01 - 08/21	145		98		243	05/01/2014
08/22 - 06/30	115		98		213	05/01/2014
CAMP H M SMITH						
01/01 - 12/31	177		111		288	05/01/2014
EASTPAC NAVAL COMP TELE AREA						
01/01 - 12/31	177		111		288	05/01/2014
FT. DERUSSEY						
01/01 - 12/31	177		111		288	05/01/2014
FT. SHAFTER						
01/01 - 12/31	177		111		288	05/01/2014
HICKAM AFB						
01/01 - 12/31	177		111		288	05/01/2014
HONOLULU						
01/01 - 12/31	177		111		288	05/01/2014
ISLE OF HAWAII: HILO						
07/01 - 08/21	145		98		243	05/01/2014
08/22 - 06/30	115		98		213	05/01/2014
ISLE OF HAWAII: OTHER						
01/01 - 12/31	189		134		323	05/01/2014
ISLE OF KAUAI						
01/01 - 12/31	305		141		446	05/01/2014
ISLE OF MAUI						
01/01 - 12/31	259		131		390	05/01/2014

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ISLE OF OAHU						
01/01 - 12/31	177		111		288	05/01/2014
KEKAHA PACIFIC MISSILE RANGE FAC						
01/01 - 12/31	305		141		446	05/01/2014
KILAUEA MILITARY CAMP						
07/01 - 08/21	145		98		243	05/01/2014
08/22 - 06/30	115		98		213	05/01/2014
LANAI						
01/01 - 12/31	229		121		350	05/01/2014
LUALUALEI NAVAL MAGAZINE						
01/01 - 12/31	177		111		288	05/01/2014
MCB HAWAII						
01/01 - 12/31	177		111		288	05/01/2014
MOLOKAI						
01/01 - 12/31	157		77		234	05/01/2014
NAS BARBERS POINT						
01/01 - 12/31	177		111		288	05/01/2014
PEARL HARBOR						
01/01 - 12/31	177		111		288	05/01/2014
SCHOFIELD BARRACKS						
01/01 - 12/31	177		111		288	05/01/2014
WHEELER ARMY AIRFIELD						
01/01 - 12/31	177		111		288	05/01/2014
MIDWAY ISLANDS						
MIDWAY ISLANDS						
01/01 - 12/31	125		77		202	05/01/2014
NORTHERN MARIANA ISLANDS						
[OTHER]						
01/01 - 12/31	99		97		196	08/01/2014
ROTA						
01/01 - 12/31	130		104		234	08/01/2014
SAIPAN						
01/01 - 12/31	140		96		236	12/01/2013
TINIAN						

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
01/01 - 12/31	99		97		196	08/01/2014
PUERTO RICO						
[OTHER]						
01/01 - 12/31	109		112		221	06/01/2012
AGUADILLA						
01/01 - 12/31	124		76		200	10/01/2012
BAYAMON						
01/01 - 12/31	195		128		323	09/01/2010
CAROLINA						
01/01 - 12/31	195		128		323	09/01/2010
CEIBA						
01/01 - 12/31	139		92		231	10/01/2012
CULEBRA						
01/01 - 12/31	150		98		248	03/01/2012
FAJARDO [INCL ROOSEVELT RDS NAVSTAT]						
01/01 - 12/31	139		92		231	10/01/2012
FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO]						
01/01 - 12/31	195		128		323	09/01/2010
HUMACAO						
01/01 - 12/31	139		92		231	10/01/2012
LUIS MUNOZ MARIN IAP AGS						
01/01 - 12/31	195		128		323	09/01/2010
LUQUILLO						
01/01 - 12/31	139		92		231	10/01/2012
MAYAGUEZ						
01/01 - 12/31	109		112		221	09/01/2010
PONCE						
01/01 - 12/31	149		89		238	09/01/2012
RIO GRANDE						
01/01 - 12/31	169		123		292	06/01/2012
SABANA SECA [INCL ALL MILITARY]						
01/01 - 12/31	195		128		323	09/01/2010
SAN JUAN & NAV RES STA						
01/01 - 12/31	195		128		323	09/01/2010

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
VIEQUES						
01/01 - 12/31	175		95		270	03/01/2012
VIRGIN ISLANDS (U.S.)						
ST. CROIX						
04/15 - 12/14	135		92		227	05/01/2006
12/15 - 04/14	187		97		284	05/01/2006
ST. JOHN						
04/15 - 12/14	163		98		261	05/01/2006
12/15 - 04/14	220		104		324	05/01/2006
ST. THOMAS						
04/15 - 12/14	240		105		345	05/01/2006
12/15 - 04/14	299		111		410	05/01/2006
WAKE ISLAND						
WAKE ISLAND						
01/01 - 12/31	173		66		239	07/01/2014

[FR Doc. 2014–17530 Filed 7–24–14; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Department of the Army

Army Education Advisory Subcommittee Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open Subcommittee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the U.S. Army War College Board of Visitors, a subcommittee of the Army Education Advisory Committee. This meeting is open to the public.

DATES: The U.S. Army War College Board of Visitors Subcommittee will meet from 8:30 a.m. to 1:30 p.m. on September 17, 2014.

ADDRESSES: U.S. Army War College, 122 Forbes Avenue, Carlisle, PA, Command Conference Room, Root Hall, Carlisle Barracks, PA 17013.

FOR FURTHER INFORMATION CONTACT: Colonel David M. Fee, the Alternate Designated Federal Officer for the subcommittee, in writing at Department of Academic Affairs, 122 Forbes Avenue, Carlisle, PA 17013, by email at *david.m.fee2.mil@mail.mil,* or by telephone at (717) 245–4162.

SUPPLEMENTARY INFORMATION: The subcommittee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to provide the subcommittee with an overview of the U.S. Army War College Academic Campaign Plan, annual year 2016 curriculum, Middle States and JPME II accreditation matters, and other administrative matters.

Proposed Agenda: The subcommittee will review and evaluate information related to the continued academic growth, accreditation, and development of the U.S. Army War College. General deliberations leading to provisional findings will be referred to the Army Education Advisory Committee for deliberation by the Committee under the open-meeting rules.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Seating is on a first to arrive basis. Attendees are requested to submit their, name, affiliation, and daytime phone number seven business days prior to the meeting to Colonel Fee, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section.

Because the meeting of the subcommittee will be held in a Federal Government facility on a military base, security screening is required. A photo ID is required to enter base. Please note that security and gate guards have the right to inspect vehicles and persons seeking to enter and exit the installation. Root Hall is fully handicap accessible. Wheelchair access is available in front at the main entrance of the building. For additional information about public access procedures, contact Colonel Fee, the subcommittee's Alternate Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the subcommittee in response to the stated agenda of the open meeting or in regard to the subcommittee's mission in general. Written comments or statements should be submitted to Colonel Fee, the subcommittee Alternate Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. The Alternate Designated Federal Official will review all submitted written comments or statements and provide them to members of the subcommittee for their consideration. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Alternate Designated Federal Official at least seven business days prior to the meeting to be considered by the subcommittee. Written comments or statements received after this date may not be provided to the subcommittee until its next meeting.

Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow a member of the public to speak or otherwise address the Committee during the meeting. Members of the public will be permitted to make verbal comments during the Committee meeting only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least seven business days in advance to the subcommittee's Alternate Designated Federal Official, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. The Alternate Designated Federal Official will log each request, in the order received, and in consultation with the Subcommittee Chair, determine whether the subject matter of each comment is relevant to the Subcommittee's mission and/or the topics to be addressed in this public meeting. A 15-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three minutes during the period, and will be invited to speak in the order in which their requests were received by the Alternate Designated Federal Official.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2014–17464 Filed 7–24–14; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Education Advisory Subcommittee Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open Subcommittee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Defense Language Institute Foreign Language Center Board of Visitors, a subcommittee of the Army Education Advisory Committee. This meeting is open to the public.

DATES: The Defense Language Institute Foreign Language Center (DLIFLC) Board of Visitors Subcommittee will meet from 8:00 a.m. to 5:00 p.m. on September 10 and 11, 2014.

ADDRESSES: Defense Language Institute Foreign Language Center, Building 617, AISO Library Conference Room, Presidio of Monterey, CA 93944.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Savukinas, the Alternate Designated Federal Officer for the

subcommittee, in writing at Defense Language Institute Foreign Language Center, ATFL–APAS–AA, Bldg. 634, Presidio of Monterey, CA 93944, by email at *robert.savukinas@dliflc.edu,* or by telephone at (831) 242–5828.

SUPPLEMENTARY INFORMATION: The subcommittee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to provide the subcommittee with briefings and information focusing on the Institute's re-structure and manpower. The subcommittee will also receive an update on the Institute's accreditation and will address administrative matters.

Proposed Agenda: September 10—The subcommittee will review the new organizational structure to include associated topics such as DLIFLC manpower, quality assurance, and leadership development. The subcommittee will be updated on the Institute's accreditation. The subcommittee will complete administrative procedures and appointment requirements. September 11—The subcommittee will have time to discuss and compile observations pertaining to agenda items. General deliberations leading to provisional findings will be referred to the Army Education Advisory Committee for deliberation by the Committee under the open-meeting rules.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Seating is on a first to arrive basis. Attendees are requested to submit their name, affiliation, and daytime phone number seven business days prior to the meeting to Dr. Savukinas, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section.

Because the meeting of the subcommittee will be held in a Federal Government facility on a military base, security screening is required. A photo ID is required to enter base. Please note that security and gate guards have the right to inspect vehicles and persons seeking to enter and exit the installation. AISO Library Conference Room is fully handicap accessible. Wheelchair access is available in front at the main entrance of the building. For additional information about public access procedures, contact Dr. Savukinas, the subcommittee's Alternate Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the subcommittee, in response to the stated agenda of the open meeting or in regard to the subcommittee's mission in general. Written comments or statements should be submitted to Dr. Savukinas, the subcommittee Alternate Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. The Alternate Designated Federal Official will review all submitted written comments or statements and provide them to members of the subcommittee for their consideration. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Alternate Designated Federal Official at least seven business days prior to the meeting to be considered by the subcommittee. Written comments or statements received after this date may not be provided to the subcommittee until its next meeting.

Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow a member of the public to speak or otherwise address the Committee during the meeting. Members of the public will be permitted to make verbal comments during the Committee meeting only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least seven business days in advance to the subcommittee's Alternate Designated Federal Official, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. The Alternate Designated Federal Official will log each request, in the order received, and in consultation with the Subcommittee Chair, determine whether the subject matter of each comment is relevant to the Subcommittee's mission and/or the topics to be addressed in this public meeting. A 15-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three minutes during the period, and will be invited to speak in the order in which their requests were received by the Alternate Designated Federal Official.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2014–17462 Filed 7–24–14; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Meetings for the Proposed Naval Base Coronado Coastal Campus Draft Environmental Impact Statement, California

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 and regulations implemented by the Council on Environmental Quality (40 Code of Federal Regulations parts 1500–1508), the Department of the Navy (DoN) has prepared and filed with the U.S. Environmental Protection Agency, a Draft Environmental Impact Statement (EIS) evaluating the potential environmental effects of constructing, operating, and maintaining an academic campus on Naval Base Coronado (NBC) to support the operational readiness of Naval Special Warfare Command (NSWC) personnel.

With the filing of the Draft EIS, the DoN is initiating a 60-day public comment period beginning on July 25, 2014 and ending on September 22, 2014. During this period, the DoN will conduct two public meetings to receive oral and written comments on the Draft EIS. This notice announces the dates and locations of the public meetings and provides supplementary information about this environmental planning effort.

Dates and Addresses: Public information and comment meetings will be held in Imperial Beach and Coronado, California between 5:00 p.m. to 8:00 p.m. on the following dates and at the following locations:

1. August 13, 2014, Marina Vista Community Center, 1075 Eighth Street, Imperial Beach, California 91932.

2. August 14, 2014, Winn Room, Coronado Public Library, 640 Orange Avenue, Coronado, California 92118.

Additional information concerning meeting times and locations is available on the EIS Web site (*http://www.nbccoastalcampuseis.com*) and through local news media.

Federal, state, and local agencies and officials, and interested groups and individuals, are encouraged to provide comments during the public comment period, in person at the public meetings (orally or in writing), or in writing online at *http://www.nbccoastalcampuseis.com* or via the U.S. Postal Service. Comments will not be accepted through social media. Written comments on the Draft EIS should be postmarked or received (online) no later than September 22, 2014, to ensure they become part of the official record. Equal weight will be given to oral and written statements.

For Mailing Written Comments and Further Information Contact: NBC Coastal Campus EIS Project Manager (Attn: Ms. Teresa Bresler), 2730 McKean Street, Building 291, San Diego, California 92136.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare this Draft EIS was published in the **Federal Register** on June 29, 2012 (77 FR 38781). Scoping meetings were held on July 17 and 18, 2012. The scoping period concluded on August 14, 2012, following a 15-day extension of the scoping period that was announced on July 31, 2012 (77 FR 45345). Comments received during the public scoping period were considered during preparation of the Draft EIS.

The proposed NBC Coastal Campus would involve the construction, operation, and maintenance of an academic campus at Silver Strand Training Complex-South (SSTC-South), San Diego, California. The proposed campus would be comprised of 1.5 million square feet of space to include a mix of instructional and administrative facilities supporting logistics, operations, training, and administration. Implementation of the proposed action would occur over a 10-year period.

The purpose of this action is to: (1) Provide logistics and operational support buildings, classrooms, storage and administrative facilities to accommodate growth of NSWC on the west coast; and, (2) maintain Congressionally-mandated increased training and operational readiness requirements for NSWC. However, the current NSWC operational support, classroom and tactical skills instruction and administrative facilities, primarily located at Naval Amphibious Base (NAB) Coronado, are inadequate to meet mission requirements. Moreover, expansion potential at that location is limited. Therefore, the proposed action would meet the needs of NSWC by optimizing the use of space within the existing NBC footprint, thereby allowing NSWC to support fluctuating organizational structure and mandated mission requirements.

In addition to the no action alternative, three development alternatives are evaluated in the Draft EIS. Alternative 1 (SSTC-South Bunker Demolition Alternative) would consolidate NSWC facilities at one location on SSTC-South. This alternative would include design and construction of logistical support buildings, equipment use and maintenance training facilities, classroom and tactical skills instruction buildings, storage and administrative facilities, utilities, fencing, roads, and parking. A new controlled entry point would provide immediate access to/from State Route 75 and a historic bunker would be demolished to facilitate campus construction. Alternative 2 (SSTC-South Bunker Retention Alternative) would include all the components of Alternative 1 within the same footprint but would include retention of the historic bunker, thereby resulting in a smaller developable footprint. Alternative 3 (Multi-Installation Alternative) would site necessary NSWC facilities at more than one location to include NAB Coronado and Naval Air Station North Island, in addition to SSTC-South. This alternative would include retention of the historic bunker similar to Alternative 2.

The Draft EIS contains a comprehensive analysis of the potential environmental impacts of the Proposed Action, including impacts on land use and recreation, geology and soils, air quality, hazardous materials and waste, water quality and hydrology, noise, biological resources, cultural resources, traffic and circulation, socioeconomics and environmental justice, public health and safety, utilities and public services, coastal uses and resources, and aesthetics.

The Draft EIS was distributed to Federal, state, and local agencies, elected officials, and other interested individuals and organizations. Copies of the Draft EIS are available for public review at the following libraries:

1. Coronado Public Library, 640 Orange Avenue, Coronado, California 92118.
2. Imperial Beach Library, 810 Imperial Beach Boulevard, Imperial Beach, California 91932.
3. City of San Diego Central Library, 330 Park Boulevard, San Diego, California 92101.

An electronic copy of the Draft EIS is available for viewing or downloading at *http://www.nbccoastalcampuseis.com.* A paper copy of the Executive Summary or a single compact disc of the Draft EIS will be made available upon written request.

Dated: July 21, 2014.

N. A. Hagerty-Ford,

Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2014–17581 Filed 7–24–14; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Applications for New Awards; National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Improving Methods of Evaluating Return on Investment for the State Vocational Rehabilitation (VR) Services Program

Notice inviting applications for new awards for fiscal year (FY) 2014.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–10.

DATES:

Applications Available: July 25, 2014.

Deadline for Letter of Intent to Apply: August 22, 2014.

Date of Pre-Application Meeting: August 15, 2014.

Deadline for Transmittal of Applications: September 3, 2014.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society,

employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most significant disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Disability and Rehabilitation Research Projects (DRRPs)

The purpose of NIDRR's DRRPs program, which is funded through the Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act. It does so by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes of individuals with disabilities, especially individuals with the most significant disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: Research, training, demonstration, development, utilization, dissemination, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b). Additional information on the DRRP program can be found at: *http://www2.ed.gov/programs/drrp/index.html*.

Priority: NIDRR has established one absolute priority for this competition. This priority is from the notice of final priority for the Disability and Rehabilitation Research Projects and Centers Program, published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2014 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Improving Methods of Evaluating Return on Investment for the State Vocational Rehabilitation Services Program (VR Program)

Note: The full text of this priority is included in the notice of final priority for this program published elsewhere in this issue of the **Federal Register** and in the application package for this competition.

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 86, and 97. (b) The Education Department debarment and suspension regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 350. (d) The notice of final priority published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $500,000.

Maximum Award: $500,000.

We will reject any application that proposes a budget exceeding $500,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html*. To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this program as follows: CFDA number 84.133A–10.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent to Apply: Due to the broad nature of the priority in this competition, and to assist with the selection of reviewers for this competition, NIDRR is requesting all potential applicants to submit a letter of intent (LOI). The submission is not mandatory and the content of the LOI will not be peer reviewed or otherwise used to rate an application.

Each LOI should be limited to a maximum of four pages and include the following information: (1) The title of the proposed project, the name of the applicant, the name of the Project Director or Principal Investigator (PI), and the names of partner institutions and entities; (2) a brief statement of the vision, goals, and objectives of the proposed project and a description of its activities at a sufficient level of detail to allow NIDRR to select potential peer reviewers; (3) a list of proposed project staff including the Project Director or PI and key personnel; (4) a list of individuals whose selection as a peer reviewer might constitute a conflict of interest due to involvement in proposal development, selection as an advisory board member, co-PI relationships, etc.; and (5) contact information for the Project Director or PI. Submission of an LOI is not a prerequisite for eligibility to submit an application.

NIDRR will accept the optional LOI via mail (through the U.S. Postal Service or commercial carrier) or email, by August 22, 2014. The LOI must be sent to: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, room 5133, Potomac Center Plaza (PCP), Washington, DC 20202, email: *marlene.spencer@ed.gov*.

For further information regarding the LOI submission process, contact Marlene Spencer at (202) 245–7532.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no

more than 100 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. You are not required to double space titles, headings, footnotes, references, captions, or text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

Note 1: Please submit an appendix that lists every collaborating organization and individual named in the application, including staff, consultants, contractors, and advisory board members. We will use this information to help us screen for conflicts of interest with our reviewers.

Note 2: An applicant should consult NIDRR's Long-Range Plan for Fiscal Years 2013–2017 (78 FR 20299) (Plan) when preparing its application. The Plan is organized around the following research domains: (1) Community Living and Participation; (2) Health and Function; and (3) Employment.

3. *Submission Dates and Times:*

Applications Available: July 25, 2014.

Deadline for Letter of Intent to Apply: August 22, 2014.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on August 15, 2014. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or to arrange for an individual consultation, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Deadline for Transmittal of Applications: September 3, 2014.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the Improving Methods of Evaluating Return on Investment for the State Vocational Rehabilitation (VR) Services Program DRRP competition, CFDA

number 84.133A–10, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for this DRRP competition at www.Grants.gov. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material. Additional, detailed information on how to attach files is in the application instructions.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number.

This notification indicates receipt by Grants.gov only, not receipt by the Department. Grants.gov will also notify you automatically by email if your application met all the Grants.gov validation requirements or if there were any errors. You will be given an opportunity to correct any errors and resubmit your application, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by Grants.gov, the Department will retrieve your application from Grants.gov and send you an email with a unique PR/Award number for your application. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

These emails do not mean that your application is free of any disqualifying errors. It is your responsibility to ensure that your submitted application has met all of the Department's requirements, including submitting all attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format, as described in this notice and in the application instructions.

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, PCP, Washington, DC 20202–2700. FAX: (202) 245–7323.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–10) LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–10) 550 12th Street, SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 350.54 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report

that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The number of products (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices developed or tested with NIDRR funding) that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports for these reviews.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov.*

If you use a TDD or a TTY, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5037, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll-free, at 1–800–877–8339.

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

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

Dated: July 22, 2014.

Melody Musgrove,

Director, Office of Special Education Programs.

[FR Doc. 2014–17605 Filed 7–24–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC14–113–000.
Applicants: Headwaters Wind Farm LLC.
Description: Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action of Headwaters Wind Farm LLC.
Filed Date: 7/17/14.
Accession Number: 20140717–5098.
Comments Due: 5 p.m. ET 8/7/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2498–002.
Applicants: South Carolina Electric & Gas Company.
Description: South Carolina Electric & Gas Company submits an updated market power analysis.
Filed Date: 7/14/14.
Accession Number: 20140717–0002.
Comments Due: 5 p.m. ET 9/12/14.

Docket Numbers: ER13–107–007.
Applicants: South Carolina Electric & Gas Company.
Description: Order No. 1000 Refile to be effective 4/19/2013.
Filed Date: 7/17/14.
Accession Number: 20140717–5094.
Comments Due: 5 p.m. ET 8/7/14.

Docket Numbers: ER14–1409–000.
Applicants: ISO New England Inc.
Description: Response to the June 27, 2014 Commission Staff Letter of ISO New England Inc. under ER14–1409.
Filed Date: 7/17/14.
Accession Number: 20140717–5101.
Comments Due: 5 p.m. ET 7/31/14.

Docket Numbers: ER14–1578–001.
Applicants: PacifiCorp.
Description: OATT EIM Compliance Filing to be effective 6/20/2014.
Filed Date: 7/18/14.
Accession Number: 20140718–5077.
Comments Due: 5 p.m. ET 8/8/14.

Docket Numbers: ER14–2414–000.
Applicants: Dominion Solar Gen-Tie, LLC.
Description: Supplement to Shared Facilities Agreement to be effective N/A.
Filed Date: 7/18/14.
Accession Number: 20140718–5064.
Comments Due: 5 p.m. ET 8/8/14.

Docket Numbers: ER14–2459–000.
Applicants: Rumford Falls Hydro LLC.
Description: Rumford Falls Hydro LLC MBR Filing to be effective 7/18/2014.
Filed Date: 7/17/14.
Accession Number: 20140717–5096.
Comments Due: 5 p.m. ET 8/7/14.

Docket Numbers: ER14–2460–000.
Applicants: Ohio Valley Electric Corporation.
Description: Compliance Amending Attachment O & P to OATT to be effective 7/17/2014.
Filed Date: 7/18/14.
Accession Number: 20140718–5001.
Comments Due: 5 p.m. ET 8/8/14.

Docket Numbers: ER14–2461–000.
Applicants: PPL Electric Utilities Corporation, PJM Interconnection, L.L.C.
Description: PPL submits SA 3880—Notice of Assignment of FERC Rate Schedule No. 23 to be effective 9/17/2010.

Filed Date: 7/18/14.
Accession Number: 20140718–5031.
Comments Due: 5 p.m. ET 8/8/14.

Docket Numbers: ER14–2462–000.
Applicants: PJM Interconnection, L.L.C.
Description: Queue Position W3–028; Original Service Agreement Nos. 3899 and 3900 to be effective 6/17/2014.
Filed Date: 7/18/14.
Accession Number: 20140718–5059.
Comments Due: 5 p.m. ET 8/8/14.

Docket Numbers: ER14–2463–000.
Applicants: Magnolia Energy LP.
Description: Notice of Cancellation of Market-Based Rate Tariff to be effective 7/19/2014.
Filed Date: 7/18/14.
Accession Number: 20140718–5065.
Comments Due: 5 p.m. ET 8/8/14.

Docket Numbers: ER14–2464–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 2014–07–18 SA 2678 OTP–Border Winds Energy FCA (J290) to be effective 7/19/2014.
Filed Date: 7/18/14.
Accession Number: 20140718–5074.
Comments Due: 5 p.m. ET 8/8/14.

Docket Numbers: ER14–2465–000.
Applicants: RE Columbia Two LLC.
Description: Baseline Filing—Market-Based Rate Tariff to be effective 9/7/2014.
Filed Date: 7/18/14.
Accession Number: 20140718–5092.
Comments Due: 5 p.m. ET 8/8/14.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES14–44–000.
Applicants: El Paso Electric Company.
Description: Supplement to June 12, 2014 Application of El Paso Electric Company under Section 204 of the Federal Power Act.
Filed Date: 7/18/14.
Accession Number: 20140718–5061.
Comments Due: 5 p.m. ET 7/28/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 18, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–17560 Filed 7–24–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP14–1053–000.
Applicants: Equitrans, L.P.
Description: Refund Report—Peoples Rates Effective 3–1–2014.
Filed Date: 7/18/14.
Accession Number: 20140718–5016.
Comments Due: 5 p.m. ET 7/30/14.

Docket Numbers: RP14–1112–000.
Applicants: Equitrans, L.P.
Description: Negotiated Rate Service Agreement—Amend Exhibit A—PDCM to be effective 4/1/2014.
Filed Date: 7/18/14.
Accession Number: 20140718–5043.
Comments Due: 5 p.m. ET 7/30/14.

Docket Numbers: RP14–1113–000.
Applicants: MIGC LLC.
Description: MIGC LLC Fuel Filing to be effective 8/1/2014.
Filed Date: 7/18/14.
Accession Number: 20140718–5129.
Comments Due: 5 p.m. ET 7/30/14.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR § 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP13–1031–008.
Applicants: Trailblazer Pipeline Company LLC.
Description: Report of Refunds.
Filed Date: 7/18/14.
Accession Number: 20140718–5112.
Comments Due: 5 p.m. ET 7/30/14.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR § 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 21, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–17546 Filed 7–24–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP14–1105–000.
Applicants: Questar Overthrust Pipeline Company.
Description: Annual FGRP Report of Questar Overthrust Pipeline Company.
Filed Date: 7/15/14.
Accession Number: 20140715–5065.
Comments Due: 5 p.m. ET 7/28/14.

Docket Numbers: RP14–1106–000.
Applicants: Cimarron River Pipeline, LLC.
Description: Noncontiguous Filing to be effective 7/16/2014.
Filed Date: 7/15/14.
Accession Number: 20140715–5125.
Comments Due: 5 p.m. ET 7/28/14.

Docket Numbers: RP14–1107–000.
Applicants: Portland Natural Gas Transmission System.
Description: PNGTS 6.2 and 6.13 Update to be effective 8/16/2014.
Filed Date: 7/16/14.
Accession Number: 20140716–5134.
Comments Due: 5 p.m. ET 7/28/14.

Docket Numbers: RP14–1108–000.
Applicants: Bluewater Gas Storage, LLC.
Description: Bluewater Firm Storage Service Ratchet Options Tariff Filing to be effective 8/18/2014.
Filed Date: 7/16/14.
Accession Number: 20140716–5150.
Comments Due: 5 p.m. ET 7/28/14.

Docket Numbers: RP14–1109–000.
Applicants: Pine Prairie Energy Center, LLC.

Description: PPEC Firm Storage Service Ratchet Options Tariff Filing to be effective 8/18/2014.
Filed Date: 7/16/14.
Accession Number: 20140716–5151.
Comments Due: 5 p.m. ET 7/28/14.

Docket Numbers: RP14–1110–000.
Applicants: SG Resources Mississippi, L.L.C.
Description: SGRM Firm Storage Service Ratchet Options Tariff Filing to be effective 8/18/2014.
Filed Date: 7/16/14.
Accession Number: 20140716–5154.
Comments Due: 5 p.m. ET 7/28/14.

Docket Numbers: RP14–1111–000.
Applicants: Vector Pipeline L.P.
Description: Tariff Clean-Up Filing to be effective 8/18/2014.
Filed Date: 7/17/14.
Accession Number: 20140717–5013.
Comments Due: 5 p.m. ET 7/29/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 17, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–17545 Filed 7–24–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9016–1]

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 07/14/2014 Through 07/18/2014

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. 20140196, Second Draft Supplement, FSA, 00, PROGRAMMATIC—Conservation Reserve Program (CRP), Implement Certain Changes to the CRP as Enacted by Congress in the 2008 Farm Bill Comment Period Ends: 09/08/2014, Contact: Nell Fuller 202–720–6303.

EIS No. 20140197, Final EIS, USACE, CA, Placer Vineyards Specific Plan, Review Period Ends: 08/25/2014, Contact: William Ness 916–557–5268.

EIS No. 20140198, Draft EIS, NMFS, WA, Two Joint State and Tribal Resource Management Plans for Puget Sound Salmon and Steelhead Hatchery Programs, Comment Period Ends: 10/23/2014, Contact: Steve Leider 360–753–4650.

EIS No. 20140199, Draft EIS, USN, CA, Naval Base Coronado Coastal Campus, Comment Period Ends: 09/22/2014, Contact: Teresa Bresler 619–556–7315.

EIS No. 20140200, Final EIS, USFS, ID, Upper North Fork HFRA Ecosystem Restoration Project, Review Period Ends: 08/25/2014, Contact: Maggie Seaberg 208–865–2711.

EIS No. 20140201, Draft EIS, USFWS, NM, Proposed Revision to the Nonessential Experimental Population of the Mexican Wolf (Canis lupus baileyi), Comment Period Ends: 09/23/2014, Contact: Tracy Melbihess 208–258–0253.

Amended Notices

EIS No. 20140153, Draft EIS, NPS, NC, Cape Lookout National Seashore Off-Road Vehicle Management Plan, Comment Period Ends: 09/04/2014, Contact: Michael B. Edwards 303–969–2694 Revision to FR Notice Published on 05/23/2014; Extending Comment Period from 07/21/2014 to 09/04/2014.

EIS No. 20140165, Draft EIS, USACE, WA, Skagit River Flood Risk Management General Investigation, Comment Period Ends: 08/05/2014, Contact: Hannah Hadley 206–764–6950.

Revision to FR Notice Published on 06/06/2014; Extending Comment Period from 7/21/2014 to 08/05/2014.

Dated: July 22, 2014.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2014–17602 Filed 7–24–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: July 21, 2014.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10504	Eastside Commercial Bank	Conyers	GA	7/18/2014

[FR Doc. 2014–17544 Filed 7–24–14; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday July 22, 2014 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

FEDERAL REGISTER NOTICE OF PREVIOUS ANNOUNCEMENT: Scheduled to be published on July 25, 2014.

CHANGE IN THE MEETING: This meeting will be continued at a future date.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2014–17709 Filed 7–23–14; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, July 22, 2014 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

Federal Register Notice of Previous Announcement—79 FR 42009.

CHANGE IN THE MEETING: This meeting will continue at the conclusion of the Open Meeting on July 23, 2014.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2014–17656 Filed 7–23–14; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 21, 2014.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Barlow Banking Corporation,* Iowa Falls, Iowa; to acquire up to 19.39 percent of the voting shares of Northfield Bancshares, Inc., and thereby indirectly acquire voting shares of Community Resource Bank, both in Northfield, Minnesota.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Vantage Bancorp, Inc.,* San Antonio, Texas; to merge with Medina Bankshares, Inc., and thereby indirectly acquire D'Hanis State Bank, both in Hondo, Texas.

Board of Governors of the Federal Reserve System, July 22, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–17572 Filed 7–24–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Robocall Contest

AGENCY: Federal Trade Commission.

ACTION: Notice; public challenge.

SUMMARY: The Federal Trade Commission (''FTC'') announces an open source prize competition that challenges the public to create and improve an innovative robocall honeypot. A honeypot is an information system that is designed to attract perpetrators of illegal acts—in this case robocallers—and gain knowledge about their tactics. The Contest will be held at DEF CON 22, a conference of information security specialists, in Las Vegas, Nevada, from August 7–10, 2014. The Contest will occur in 3 independent phases, with Winner(s) chosen from each phase. Phase 1, ''Creator,'' involves building a robocall honeypot. Phase 2, ''Attacker,'' requires Contestants to identify a honeypot's security vulnerabilities. Phase 3, ''Detective,'' involves analysis of data from an existing robocall honeypot.

DATES: Contestants may register for any phase beginning at 9:00 a.m. Pacific Daylight Time (''PDT'') on August 7, 2014 at the FTC's ''Zapping Rachel'' booth at DEF CON 22. The deadline for submitting entries for phase 1 is August 8, 2014 at 12:00 p.m. PDT; phase 2 is August 9, 2014 at 12:00 p.m. PDT; and phase 3 is August 9, 2014 at 7:00 p.m. PDT.

FOR FURTHER INFORMATION CONTACT: Patricia Hsue, 202–326–3132, or Kati Daffan, 202–326–2727, Division of Marketing Practices, Bureau of Consumer Protection, FTC; 600 Pennsylvania Ave. NW.; Mailstop CC–8528; Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The FTC Robocall Contest (the ''Contest'') will complement the Federal Trade Commission's 2012 Robocall Challenge and advance its work, along with that of its public and private sector partners, to combat illegal telemarketing calls. Telemarketing robocalls are prerecorded messages that generally seek to promote the purchase of goods or services to a consumer, and are regulated by the FTC under the Telemarketing Sales Rule. See 16 CFR 310.4(b)(1)(v). Most such calls are illegal,[1] and yet they continue to be prevalent.

The FTC is hosting the Contest at DEF CON 22. The Contest will challenge the public to contribute to the design of robocall honeypots—information

[1] The vast majority of prerecorded sales calls are illegal under the Telemarketing Sales Rule unless the recipient has provided express written consent to receive them. 73 FR 51164 (Aug. 29, 2008); 16 CFR 310.4(b)(1)(v). The Telephone Consumer Protection Act also prohibits any type of call (other than a call made for emergency purposes) using automated telephone equipment or an artificial or prerecorded voice to a cellular telephone in the absence of prior express consent. 47 U.S.C. 227(b)(1)(A)(iii).

systems intended to attract perpetrators of illegal robocalls and gather knowledge about robocaller tactics. The Robocall Contest is intended to engage individuals or teams of individuals with information security expertise (collectively ''Contestants'') to apply their knowledge to design the next-generation of robocall honeypots.

The Contest is subject to all applicable laws and regulations. Participation constitutes Contestant's full agreement to these Official Rules and to decisions of the Sponsor (as defined below), which are final and binding in all matters related to the Contest. Winning a Prize is contingent upon fulfilling all requirements set forth in the Official Rules.

1. Sponsor and Participating Organizations

A. Sponsor: Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

B. Participating Organizations:

(i) Telephone Science Corporation, also d/b/a Nomorobo, 5507–10 Nesconset Hwy, Suite 201; Mt Sinai, NY 11766;

(ii) Twilio, Inc. (''Twilio''), 645 Harrison Street, Third Floor; San Francisco, CA 94107.

2. Eligibility

A. To participate in the Contest:

(i) Contestants may compete as individuals or as teams of individuals, if they meet all eligibility requirements set forth in sections 2.A–C. To be eligible to win a Prize, Contestants must meet the additional prize eligibility requirements set forth in section 2.D.

(ii) Contestants must comply with all terms and conditions of the Official Rules throughout the Contest and Judging Period.

(iii) Contestants must own or have access at their own expense to a computer, an Internet connection, and any other electronic devices, documentation, software, or other items that Contestants may deem necessary to create and enter a Submission (as defined in Section 4 below).

(iv) Each team shall appoint one individual (the ''Representative'') to represent and act on behalf of said team, including by entering a Submission. The Representative must be duly authorized to submit on behalf of the team, and must represent and warrant that he/she is duly authorized to act on behalf of the team.

(v) An individual may join more than one team, and an individual who is part of a team may also enter the Contest on an individual basis.

(vi) No individual or team may enter the Contest on behalf of a corporation or other non-individual legal entity.

B. The following individuals (including any individuals participating as part of a team) are *not* eligible regardless of whether they meet the criteria set forth above:

(i) Any individual under the age of 18;

(ii) any individual who employs any Judge or otherwise has a material business relationship or affiliation with any Judge;

(iii) any individual who is a member of any Judge's immediate family or household;

(iv) any individual who has been convicted of a felony;

(v) the Sponsor, Participating Organizations, and any advertising agency, contractor or other individual or organization involved with the design, production, promotion, execution, or distribution of the Contest; all employees, representatives and agents thereof; and all members of the immediate family or household of any such individual, employee, representative, or agent;

(vi) any Federal entity or Federal employee acting within the scope of his or her employment, or as may otherwise be prohibited by Federal law (employees should consult their agency ethics officials);

(vii) any individual or team that used Federal facilities or relied upon significant consultation with Federal employees to develop a Submission, unless the facilities and employees were made available to all Contestants participating in the Contest on an equal basis; and

(viii) any individual or team that used Federal funds to develop a Submission, unless such use is consistent with the grant award, or other applicable Federal funds awarding document. If a grantee using Federal funds enters and wins this Contest, the prize monies will need to be treated as program income for purposes of the original grant in accordance with applicable Office of Management and Budget Circulars. Federal contractors may not use Federal funds from a contract to develop a Submission for this Challenge.

C. For purposes hereof:

(i) The members of an individual's immediate family include such individual's spouse, children and step-children, parents and step-parents, and siblings and step-siblings; and

(ii) the members of an individual's household include any other person who shares the same residence as such individual for at least three (3) months out of the year.

D. Pursuant to the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science Reauthorization Act of 2010, 15 U.S.C. 3719, Contest Prizes (as defined in Section 10 below) may only be awarded to individuals and teams of individuals who are citizens or permanent residents of the United States, subject to verification by the Sponsor before Prizes are awarded (see Section 11 below).

3. Registration Requirement for all Contestants

A. Beginning at 9:00 a.m. PDT on August 7, 2014, Contestants may visit the FTC's ''Zapping Rachel'' booth at DEF CON 22, located at the Rio Hotel and Casino in Las Vegas, Nevada.

B. To enter, every Contestant, including all members of a team, must register by signing a form (''Registration Form'') to verify that he or she: (1) Has read and agreed to the Official Rules; (2) is over the age of 18; (3) does not have a familial or financial relationship with any Judge as specified in Section 2.B.(ii)-(iii); and (4) has not been convicted of a felony. A familial or financial relationship with any Judge or a felony conviction will disqualify the Contestant from participation in the Contest. The Registration Form will be available to Contestants beginning at 9:00 a.m. PDT on August 7, 2014 at the FTC's ''Zapping Rachel'' booth at DEF CON 22.

C. Contestants should register as soon as possible and will thereupon receive important information regarding each phase of the Contest in which they intend to participate, such as Twilio free credit for phases 1 and 2, or access to necessary data for phase 3. See Sections 7–9. Contestants must submit their Registration Forms before the Submission Deadline of the first phase in which they are participating.

D. After a Contestant registers, the Sponsor will send a confirmation message from *RobocallContest@ftc.gov* to the email address provided by the Contestant. The Contestant should use the confirmation message to verify the email address, in order to indicate agreement to participate in the Contest and receive important Contest updates.

E. In the event of a dispute pertaining to this Contest, the authorized account holder of the email address listed at registration will be deemed to be the Contestant. The ''authorized account holder'' is the natural person assigned an email address by an Internet access provider, online service provider, or other organization responsible for assigning email addresses for the domain associated with the submitted

address. Contestants may be required to show proof of being the authorized account holder.

F. Contestants must be physically present at the site of the Contest in order to participate. Individuals who wish to participate in the Contest without paying for entry to DEF CON 22 must send an email to *RobocallContest@ftc.gov* indicating this preference on or before July 31, 2014. Such individuals may be escorted to the ''Zapping Rachel'' booth as the Sponsor deems necessary, but will not be able to attend any other events, contests, presentations, or otherwise participate in DEF CON 22.

4. Submission

A. To participate in any phase of the Contest, a Contestant must submit the following via electronic mail:

(i) The name of the solution;

(ii) solution source code;

(iii) a written description (as required for the specific phase); and

(iv) any other materials required under Sections 7–9 below, including access to relevant call detail records, dialing platforms, and/or other technologies needed to test the Submission.

Paragraphs (i)–(iv) above are collectively a ''Submission.'' The email address used to submit the Submission shall match the address provided on a Contestant's Registration Form. With the exception of this originating email address, no part of the Submission shall contain information revealing the Contestant's identity, such as a name, address, employment information, or other identifying details.

B. Submission Deadlines

(i) For phase 1, Contestants must enter their Submissions by August 8, 2014 at 12:00 p.m. PDT.

(ii) For phase 2, Contestants must enter their Submissions by August 9, 2014 at 12:00 p.m. PDT.

(iii) For phase 3, Contestants must enter their Submissions by August 9, 2014 at 7:00 p.m. PDT.

Paragraphs (i)–(iii) above are collectively the ''Contest Deadlines.'' The Sponsor's computer is the official time-keeping device for this Contest. Any Submissions entered following the respective Contest Deadlines shall be disqualified. The Judging Period for each phase will commence immediately following the deadline for each phase. The Sponsor may limit the number of Contestants who can participate in each phase to ensure that the Judges have sufficient time to review the Submissions.

C. Submission Requirements

(i) The name, source code, written description, and any other materials should all be submitted at the same time. All Submissions must be received by the Contest Deadline for each phase.

(ii) Source code must be compatible with languages and platforms that the Sponsor will specify on or before August 7, 2014.

(iii) No part of a Submission may require the Sponsor or Judges to spend money or otherwise obtain anything of value.

(iv) Submissions from a team must so indicate when entering a Submission.

(v) With the exception of source code, Submissions must be in English, except that textual material in a language other than English will be accepted if accompanied by an English translation of that text.

(vi) Any solution that was publicly available prior to the start of the Contest Submission Period (August 7–10, 2014) is not eligible for entry in the Contest, unless the solution submitted incorporated significant new functionality, features, and changes that are not publicly available. Contestants must include a narrative description of the new functionality with any such Submission.

(vii) Submissions must not:

a. Violate applicable law;

b. depict hatred;

c. be in bad taste;

d. denigrate (or be derogatory toward) any person or group of persons or any race, ethnic group, or culture;

e. threaten a specific community in society, including any specific race, ethnic group, or culture;

f. incite violence or be likely to incite violence;

g. contain vulgar or obscene language or excessive violence;

h. contain pornography, obscenity, or sexual activity; or

i. disparage the Sponsor.

(viii) Submissions must be free of malware and other security threats. Contestant agrees that the Sponsor may conduct testing on each Submission to determine whether malware or other security threats may be present.

(ix) Submissions that do not comply with any of the above requirements may be disqualified.

D. Additional Terms

(i) Once a Submission has been submitted, Contestant may not access or make any changes or alterations to the Submission.

(ii) A Contestant may submit more than one Submission. However, each Submission must be unique, as determined by Sponsor in its sole discretion. If a Contestant enters two or more Submissions that are substantially similar, the Sponsor reserves the right to disqualify Submissions or require the Contestant to choose one Submission to be entered into the Contest.

(iii) By entering a Submission, Contestant represents, warrants, and agrees that the Submission is the original work of the Contestant and complies with the Official Rules.

Contestant further represents, warrants, and agrees that any use of the Submission by the Sponsor and/or Judges (or any of their respective partners, subsidiaries, and affiliates) as authorized by these Official Rules, does not:

a. Infringe upon, misappropriate or otherwise violate any intellectual property right or proprietary right including, without limitation, any statutory or common law trademark, copyright or patent, nor any privacy rights, nor any other rights of any person or entity;

b. constitute or result in any misappropriation or other violation of any person's publicity rights or right of privacy.

5. Submission Rights

By entering a Submission to this Contest, Contestant grants to any person obtaining a copy of his or her Submission, a non-exclusive, irrevocable, royalty-free and worldwide license to use, copy, modify, merge, publish, or distribute the Submission, any information and content submitted by the Contestant, and any portion thereof. Contestants agree that such Submissions shall be made and remain available to all for use on an open source basis, as defined by the Open Source Initiative, *see* opensource.org. Contestant further grants to the Sponsor the right to display the Submission on the Internet. Sponsor, and any third parties acting on its behalf, will also have the right to publicize Contestant's name or codename and, as applicable, the names or codenames of Contestant's team members, on the Contest Web site at *www.ftc.gov,* and in any media whatsoever, for advertising and publicity purposes relating to the Contest. The Contestant agrees that the foregoing constitutes solely a condition of the Contestant's participation in the Contest, and that nothing herein shall constitute a procurement, including the acquisition of any intellectual property. See Section 12.C below.

6. Winner Selection and Judging Criteria

A. All Submissions will be judged by an expert panel of judges (the ''Judges'') selected by the Sponsor at the Sponsor's sole discretion. The Sponsor reserves the right to substitute or modify the judging panel, or extend or modify the Judging Period, at any time for any reason.

B. All Judges shall be required to remain fair and impartial. Any Judge may recuse him or herself from judging a Submission if the Judge or the Sponsor considers it inappropriate, for any reason, for the Judge to evaluate a specific Submission or group of Submissions.

C. A Contestant's likelihood of winning will depend on the number and quality of all of the Submissions, as determined by the Judges using the criteria in these Official Rules.

D. For all phases, the Sponsor reserves the right to review the Judges' decision and to withhold any Prize if, at the Sponsor's sole discretion, there is a procedural, legal, or other reason that the Prize should not be awarded.

E. The Judges will document the scores assigned to each Submission for each phase, and these scores may be subject to release by the Sponsor in its sole discretion or if required by law.

F. The Sponsor and/or Judges intend to announce who earned the top scores from each of the 3 phases on August 10, 2014. Prizes, however, will not be awarded and Winners will not be named, until the Sponsor verifies eligibility for receipt of each Prize in accordance with Section 11 below. The Sponsor will announce verified Winners at a later date, and the results will be made available at the Contest Web site.

7. Phase 1: Creator

A. Phase 1 Contestants will stand in the shoes of experts trying to understand and defeat robocaller tactics. Contestants will be required to: (1) Build a honeypot that collects data on each call; and (2) categorize the calls based on the likelihood that the call is a robocall (a call delivering a prerecorded message). In designing the honeypot, Contestants may not include any feature that requires ongoing manual processing. Each Contestant will receive free access to a Twilio account, which requires an agreement to comply with Twilio's terms of service. Twilio will provide a platform that Contestants may use to build their honeypot and at least one phone number associated with the Twilio account. If Contestants build a honeypot on Twilio's platform, they will also receive $30 of credit. Without spending any credit, each Contestant may receive and send calls to the phone number associated with his or her Twilio account from one external phone number. To send and receive calls using additional lines, Contestants may spend up to their $30 credit limit. The credit may also be applied toward other Twilio features. Contestants, however, are not required to use the Twilio platform and may use any tools they choose so long as Contestants also provide one or more honeypot phone lines, access to the associated call detail records or call logs, and any other information so that the Judges can test their Submissions without additional cost. Contestants will be disqualified, however, if they: (1) Place calls using an autodialing program or the functional equivalent; (2) adversely affect the Twilio platform; (3) adversely affect any other platform, product, system, or technology; (4) violate the terms of service of Twilio or any other third party provider; (5) do anything prohibited by law; or (6) place calls to any number outside their own honeypot. Judges will test the Submissions by sending calls to the honeypots and reviewing the information associated with incoming calls. Each Contestant will submit all source code in addition to a written description of the solution, consisting of fewer than 500 words, summarizing the Contestant's techniques and outcomes.

Judging Criteria

(i) Building Knowledge (70% of Total Score)

- Did you succeed in identifying inaccuracies in the data captured? You will receive ten points for each distinct successful method that your honeypot used to identify calls in which the data captured in any field was inaccurate. Inaccurate data could include, but is not limited to, false caller ID number or date of the call. Contestants will need to prove to the Judges' satisfaction that the data captured was inaccurate, and the necessary level of proof is within the Judges' sole discretion. Furthermore, the Judges have sole discretion to determine whether two successful methods are meaningfully distinct.
- Did your honeypot successfully categorize calls based on the likelihood that the calls are robocalls? Contestants will receive up to 30 points based on the percentage of calls that are successfully categorized. Contestants will need to prove to the Judges' satisfaction that the calls were accurately categorized, and the necessary level of proof is within the Judge's sole discretion.
- Is your honeypot scalable? For each distinct method that your honeypot uses to categorize or verify the accuracy of the data collected, Contestants will receive five points for each such method that is easily replicable and adaptable. Furthermore, the Judges have sole discretion to determine whether two methods are meaningfully distinct.
- The Judges will compare the total points earned by each Contestant in this category and use these totals to assign a percentage amount of no greater than 70% to each Contestant.

(ii) Explaining the Scheme (20% of Total Score)

- What insights did your Submission demonstrate with respect to setting up an effective robocall honeypot?
- What insights did your Submission demonstrate in determining the accuracy of the data captured?
- What insights did your Submission demonstrate in determining how to categorize calls based on the likelihood that the calls are robocalls?

(iii) Innovation (10% of Total Score)

- How innovative was your Submission?

B. In order to be considered for a Prize, Submissions must score at least one percentage point in each required category (building knowledge, explaining the scheme, and innovation). If the Judges determine that no one satisfies each required category, no one will be deemed eligible for any Prize.

C. The one (1) Contestant whose Submission earns the highest overall score will be named Winner of the phase 1 Top Prize identified below in Section 10, if the Contestant satisfies the verification requirements described in Section 11. If the Contestant does not satisfy the verification requirements, the phase 1 Top Prize may be awarded to the next highest scorer who satisfies the verification requirements, at the Judges' or Sponsor's discretion.

D. Up to two (2) Contestants with the subsequent highest scores who meet the Section 11 verification requirements may be awarded the phase 1 Honorable Mention Prizes—described below in Section 10—at the Judges' or Sponsor's discretion.

E. In the event of a tie between or among two or more Submissions where the Contestants meet the verification requirements, the relevant Prize identified below in Section 10 will be divided equally between the tied Contestants.

8. Phase 2: Attacker

A. Phase 2 Contestants will look into the minds of robocallers. Each Contestant will receive a list of 25 phone numbers that belong to a robocall

honeypot set up on the Twilio platform. Contestants will also have free access to a Twilio account with $15 of credit that may be applied toward Twilio features. Contestants will attempt to circumvent the robocall honeypot. Merely spoofing the caller ID information (i.e., providing inaccurate or missing Caller ID data) will not be counted as circumvention of the robocall honeypot. One example of a way that Contestants can successfully circumvent the robocall honeypot is by placing undetected calls to the robocall honeypot numbers. A call is ''undetected'' if it prevents the honeypot from gathering any data about the call, including that the call was made. Contestants will be disqualified if they: (1) Place calls using an autodialing program or the functional equivalent; (2) adversely affect the robocall honeypot; (3) adversely affect the Twilio platform; (4) adversely affect any other platform, product, system, or technology; (5) violate the terms of service of Twilio or any other third party provider; (6) do anything prohibited by law; or (7) place calls to any number outside the robocall honeypot. Contestants may use any tool or platform to circumvent the honeypot. For each circumvention effort, Contestants must provide the necessary means for Judges to test and replicate the attack. If Contestants use a tool other than Twilio to place calls that circumvent the honeypot, Contestants must also provide access to their call detail records or call logs. In addition, each Contestant will submit all source code and a written description consisting of fewer than 500 words summarizing: (1) The Contestant's circumvention techniques and outcomes; (2) theoretical circumvention techniques that the Contestant did not test but would be useful to a robocaller; and (3) how the Contestant would build a better honeypot to prevent such techniques.

Judging Criteria

(i) Hitting the Target (50% of Total Score)

- Did you succeed in circumventing the robocall honeypot? You will receive one point for each distinct method that you used to circumvent the robocall honeypot. Contestants will need to prove to the Judges' satisfaction that they circumvented the honeypot, and the necessary level of proof is within the Judges' sole discretion. Furthermore, the Judges have sole discretion to determine whether two circumvention methods are meaningfully distinct.
- The Judges will compare the total points earned by each Contestant in this category and use these totals to assign a percentage amount of no greater than 50% to each Contestant.

(ii) Explaining the Scheme (20% of Total Score)

- What insights did your Submission demonstrate about how attackers might circumvent a robocall honeypot, including by placing undetected calls?
- What theoretical techniques did your Submission describe for how attackers might circumvent a robocall honeypot?

(iii) Rebuilding (10% of Total Score)

- What insights did your Submission demonstrate about building a better robocall honeypot?

(iv) Innovation (20% of Total Score)

- How innovative were your actual or proposed methods of circumventing the honeypot?

B. In order to be considered for a Prize, Submissions must score at least one percentage point in each required category (hitting the target, explaining the scheme, rebuilding, and innovation). If the Judges determine that no one satisfies each required category, no one will be deemed eligible for any Prize.

C. The one (1) Contestant whose Submission earns the highest overall score will be named Winner of the phase 2 Top Prize identified below in Section 10, if the Contestant satisfies the verification requirements described in Section 11. If the Contestant does not satisfy the verification requirements, the phase 2 Top Prize may be awarded to the next highest scorer who satisfies the verification requirements, at the Judges' or Sponsor's discretion.

D. Up to two (2) Contestants with the subsequent highest scores who meet the Section 11 verification requirements may be awarded the phase 2 Honorable Mention Prizes—described below in Section 10—at the Judges' or Sponsor's discretion.

E. In the event of a tie between or among two or more Submissions where the Contestants meet the verification requirements, the relevant Prize identified below in Section 10 will be divided equally between the tied Contestants.

9. Phase 3: Detective

A. Each phase 3 Contestant will receive two sets of call data from an existing robocall honeypot. The Sponsor will provide this data at the FTC's ''Zapping Rachel'' booth at DEF CON 22, beginning at 9:00 a.m. PDT on August 7, 2014. The first data set will identify calls that, based on real-world information, are likely to have been a robocall (a call delivering a prerecorded message). Based on information provided in the first data set, Contestants will develop an algorithm and will predict which of the calls in the second data set are likely to be robocalls. In addition to submitting these predictions, each Contestant will submit all source code and a written description of the algorithm consisting of fewer than 250 words.

Judging Criteria

(i) Uncovering the Truth (70% of Total Score)

- Did you correctly predict whether the calls in the second honeypot data set were likely to be robocalls? To assess this, the Judges will compare your predictions with real-world information about which calls are likely to be a robocall. You will receive one point for each call you successfully identified as a likely robocall, and deducted one point for each call you inaccurately identified as a likely robocall.
- The Judges will compare the total points earned by each Contestant in this category and use these totals to assign a percentage amount of no greater than 70% to each Contestant.

(ii) Explaining the Scheme (20% of Total Score)

- What insights did your Submission demonstrate with respect to the analysis of honeypot call records?

(iii) Innovation (10% of Total Score)

- How innovative was your Submission?

B. In order to be considered for a Prize, Submissions must score at least one percentage point in each required category (uncovering the truth, explaining the scheme, and innovation). If the Judges determine that no one satisfies each required category, no one will be deemed eligible for any Prize.

C. The one (1) Contestant whose Submission earns the highest overall score will be named Winner of the phase 3 Top Prize identified below in Section 10, if the Contestant satisfies the verification requirements described in Section 11. If the Contestant does not satisfy the verification requirements, the phase 3 Top Prize may be awarded to the next highest scorer who satisfies the verification requirements, at the Judges' or Sponsor's discretion.

D. Up to two (2) Contestants with the subsequent highest scores who meet the Section 11 verification requirements may be awarded the phase 3 Honorable Mention Prizes—described below in Section 10—at the Judges' or Sponsor's discretion.

E. In the event of a tie between or among two or more Submissions where

the Contestants meet the verification requirements, the relevant Prize identified below in Section 10 will be divided equally between the tied Contestants.

10. Prizes

Winner	Prize amount (for each Winner)	Quantity
Phase 1 Top Prize	U.S. $3,133.70	1
Phase 1 Honorable Mention(s)	U.S. $1,337.00	2
Phase 2 Top Prize	U.S. $3,133.70	1
Phase 2 Honorable Mention(s)	U.S. $1,337.00	2
Phase 3 Top Prize	U.S. $3,133.70	1
Phase 3 Honorable Mention(s)	U.S. $1,337.00	2

A. If no eligible Submissions are entered in the Contest, the Prize will not be awarded. The Sponsor retains the right to make a Prize substitution in the event that funding for the Prize or any portion thereof becomes unavailable. No transfer or substitution of a Prize is permitted except at the Sponsor's sole discretion. It will be the responsibility of the winning team's Representative to allocate the Prize amongst the team, as the Representative deems it appropriate.

B. In the event a Winner's employer has a policy that prohibits the awarding of a Prize to an employee, the Winner must forfeit the Prize and the Sponsor may select an alternate Winner. Each Contestant hereby acknowledges and agrees that the relationship between the Contestant and the Sponsor is not a confidential, fiduciary, or other special relationship, and that the Contestant's decision to provide the Contestant's Submission to Sponsor for the purposes of this Contest does not place the Sponsor and its respective agents in a position that is any different from the position held by the members of the general public with regard to elements of the Contestant's Submission, except as specifically provided in these Official Rules.

C. Winners (including any winning team members) are responsible for reporting and paying all applicable federal, state, and local taxes. It is the sole responsibility of Winners of $600 or more to provide information to the Sponsor in order to facilitate receipt of the award, including completing and submitting any tax forms when necessary. It is also the sole responsibility of Winners to satisfy any applicable reporting requirements. The Sponsor reserves the right to withhold a portion of the Prize amount to comply with tax laws.

D. All payments shall be made by electronic funds transfer or other means determined by the Sponsor.

11. Verification of Eligibility for Receipt of a Prize

A. All Prize Awards Are Subject To Sponsor Verification Of The Winner's Identity, Eligibility, And Participation In The Creation Of The Solution. The Sponsor's Decisions Are Final And Binding In All Matters Related To The Contest. In order to receive a Prize, a Contestant will be required to complete, sign and return to the Sponsor affidavit(s) of eligibility and liability release, or a similar verification document (''Verification Form''). 31 U.S.C. 7701 requires Federal agencies to collect social security numbers to issue a payment. (In the case of a team, the Representative and all participating members must complete, sign and return to the Sponsor the Verification Form in order for the team to receive a Prize.)

B. Contestants potentially qualifying for a Prize will be notified and sent the Verification Form using the email address submitted at registration, starting on or about August 10, 2014. In the case of a team, the notification will only be sent to the Representative. If a notification is returned as undeliverable, the Contestant or team may be disqualified at the Sponsor's sole discretion.

C. At the sole discretion of the Sponsor, a Contestant or team forfeits any Prize if:

(i) The Contestant fails to provide the Verification Form within five (5) business days of receipt of the email notification discussed above (or in the case of a team, any team member fails to provide the Verification Form within five business days of receipt of the email notification);

(ii) the Contestant (or in the case of a team, its Representative) does not timely communicate with the Sponsor to provide payment and all other necessary information within five business days of receiving a request for such information;

(iii) such individual or team Representative is contacted and refuses the Prize;

(iv) the Prize is returned as undeliverable; or

(v) the Submission of the Winner, the Winner, or any member of a Winner's team is disqualified for any reason.

D. In the event of a disqualification, Sponsor, at its sole discretion, may award the applicable Prize to an alternate Contestant. The disqualification of one (or more) team members at any time for any reason may result in the disqualification of the entire team and of each participating member at the sole discretion of the Sponsor.

12. Entry Conditions and Release

A. By entering, each Contestant (including, in the case of a team, all participating members) agree(s) to:

(i) Comply with and be bound by these Official Rules and the decisions of the Sponsor and/or the Contest Judges, whose Rules and decisions are binding and final in all matters relating to this Contest;

(ii) release, indemnify, defend, and hold harmless the Sponsor, Participating Organizations, and any other individuals or organizations responsible for sponsoring, fulfilling, administering, advertising, or promoting the Contest, including their respective parents, subsidiaries, and affiliated companies, if any, and all of their respective past and present officers, directors, employees, agents and representatives (hereafter the ''Released Parties'') from and against any and all claims, expenses, and liabilities (including reasonable attorneys' fees), including but not limited to negligence and damages of any kind to persons and property, defamation, slander, libel, violation of right of publicity, infringement of trademark, copyright or other intellectual property rights, property damage, or death or personal injury arising out of or relating to a Contestant's entry, creation of Submission or entry of a Submission, participation in the Contest, acceptance or use or misuse of the Prize and/or the broadcast, transmission, performance,

exploitation, or use of Submission as authorized or licensed by these Official Rules.

B. Without limiting the foregoing, each Contestant agrees to release all Released Parties of all liability in connection with:

(i) Any incorrect or inaccurate information, whether caused by the Sponsor's or a Contestant's electronic or printing error or by any of the equipment or programming associated with or utilized in the Contest;

(ii) technical failures of any kind, including, but not limited to, malfunctions, interruptions, or disconnections in phone lines, internet connectivity, or electronic transmission errors, or network hardware or software or failure of the Contest Web site, or any other platform or tool that Contestants or Judges choose to use;

(iii) unauthorized human intervention in any part of the entry process or the Contest;

(iv) technical or human error that may occur in the administration of the Contest or the processing of Submissions; or

(v) any injury or damage to persons or property that may be caused, directly or indirectly, in whole or in part, from the Contestant's participation in the Contest or receipt or use or misuse of any Prize. If for any reason any Contestant's Submission is confirmed to have been erroneously deleted, lost, or otherwise destroyed or corrupted, the Contestant's sole remedy is to request the opportunity to resubmit its Submission. The request will be addressed at the sole discretion of the Sponsor if the Contest Submission Period is still open.

C. The Contest is not a procurement. The Sponsor does not acquire any intellectual property and Contestants agree to permit the Sponsor to publicize Contestants and Contest Winners solely as a condition of the Contestant's participation in the Contest. See Paragraph 14 below.

D. Based on the subject matter of the Contest, the type of work that it possibly will require, and the likelihood of any claims for death, bodily injury, or property damage, or loss potentially resulting from challenge participation, the Sponsor determines that Contestants are not required to obtain liability insurance or demonstrate fiscal responsibility in order to participate in this Contest.

13. Publicity

Participation in the Contest constitutes consent to Sponsor's and its agents' use of the Contestant's name or codename (and, as applicable, those of all other members of the team that participated in the Submission) for promotional purposes in any media, worldwide, without further payment or consideration. Furthermore, a Contestant's likeness, photograph, voice, opinions, comments, and/or hometown and state of residence (and, as applicable, those of all other members of the team that participated in the Submission) may be used if the Contestant provides consent.

14. General Conditions

A. Sponsor reserves the right to cancel, suspend, and/or modify the Contest, or any part of it, if any fraud, technical failure, or any other unanticipated factor or factors beyond Sponsor's control impairs the integrity or proper functioning of the Contest, as determined by Sponsor at its sole discretion. The Sponsor reserves the right at its sole discretion to disqualify any individual or Contestant that the Sponsor finds to be tampering with the entry process or the operation of the Contest, or to be acting in violation of these Official Rules or in a manner that is inappropriate, not in the best interests of this Contest, or in violation of any applicable law or regulation.

B. Any attempt by any person to undermine the proper functioning of the Contest may be a violation of criminal and civil law, and, should such an attempt be made, the Sponsor reserves the right to take proper legal action, including, without limiting, referral to law enforcement, for any illegal or unlawful activities.

C. The Sponsor's failure to enforce any term of these Official Rules shall not constitute a waiver of that provision. The Sponsor is not responsible for incomplete, late, misdirected, damaged, lost, illegible, or incomprehensible Submissions or for address or email address changes of the Contestants. Proof of sending or submitting will not be deemed to be proof of receipt by Sponsor.

D. In the event of any discrepancy or inconsistency between the terms and conditions of the Official Rules and disclosures or other statements contained in any Contest materials, including but not limited to the Contest Web site or point of sale, television, print or online advertising, the terms and conditions of the Official Rules shall prevail.

E. The Sponsor reserves the right, without liability, to amend the terms and conditions of the Official Rules at any time, including the rights or obligations of the Contestant and the Sponsor. The Sponsor will post the terms and conditions of the amended Official Rules on the Contest Web site (''Corrective Notice''). As permitted by law, any amendment will become effective at the time the Sponsor posts the amended Official Rules.

F. Excluding Submissions, all intellectual property related to this Contest, including but not limited to trademarks, trade-names, logos, designs, promotional materials, Web pages, source codes, drawings, illustrations, slogans, and representations are owned or used under license by the Sponsor. All rights are reserved. Unauthorized copying or use of any copyrighted material or intellectual property without the express written consent of its owners is strictly prohibited.

G. Should any provision of these Official Rules be or become illegal or unenforceable under applicable Federal law, such illegality or unenforceability shall leave the remainder of these Official Rules unaffected and valid. The illegal or unenforceable provision shall be replaced by a valid and enforceable provision that comes closest and best reflects the Sponsor's intention in a legal and enforceable manner with respect to the invalid or unenforceable provision.

15. Limitations of Liability

By entering, all Contestants (including, in the case of a team, all participating members) agree to be bound by the Official Rules and hereby release the Released Parties from any and all liability in connection with the Prizes or Contestant's participation in the Contest, except for any claims against the Sponsor arising out of the unauthorized use or disclosure by the Sponsor of (1) the intellectual property of the participant beyond the authorized uses established in these rules, or (2) the trade secrets or confidential business information of the participant. Provided, however, that any liability limitation regarding gross negligence or intentional acts, or events of death or body injury, shall not be applicable in jurisdictions where such limitation is not legal.

16. Disputes

A. Contestants agree that:

(i) Any and all disputes, claims, and causes of action arising out of or connected with this Contest, any Prizes awarded, the administration of the Contest, or the determination of Winners, shall be resolved individually;

(ii) any and all disputes, claims, and causes of action arising out of or connected with this Contest, any Prizes awarded, the administration of the Contest, or the determination of Winners, shall be resolved pursuant to Federal law;

(iii) under no circumstances will Contestants be entitled to, and Contestants hereby waive, all rights to claim, any punitive, incidental, and consequential damages and any and all rights to have damages multiplied or otherwise increased.

B. All issues and questions concerning the construction, validity, interpretation, and enforceability of these Official Rules, or the rights and obligations of the Contestants and the Sponsor in connection with the Contest, shall be governed by, and construed in accordance with, Federal law.

17. Privacy

The Sponsor may collect personal information from you when you enter the Contest. Such personal information collected is subject to the privacy policy located here: *http://www.ftc.gov/site-information/privacy-policy.*

18. Contact Us

Please visit the Frequently Asked Questions portion of the Contest Web site for further Contest information and updates.

Jessica Rich,

Director, Bureau of Consumer Protection.

[FR Doc. 2014–17553 Filed 7–24–14; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Information Collection Activity; Comment Request; State Developmental Disabilities Council 5-Year State Plan

AGENCY: Administration for Community Living, Administration on Intellectual and Developmental Disabilities, HHS.

ACTION: Notice.

SUMMARY: A Plan developed by the State Council on Developmental Disabilities is required by federal statute. Each State Council on Developmental Disabilities must develop the plan, provide for public comments in the State, provide for approval by the State's Governor, and finally submit the plan on a five-year basis. On an annual basis, the Council must review the plan and make any amendments. The State Plan will be used (1) by any amendments. The State Plan will be used (2) by the Council as a planning document; (3) by the citizenry of the State as a mechanism for commenting on the plans of the Council; (4) by the Department as a stewardship tool, for ensuring compliance with the Developmental Disabilities Assistance and Bill of Rights Act of 2000, as one basis for providing technical assistance (e.g., during site visits), and as a support for management decision making.

FOR FURTHER INFORMATION CONTACT: Valerie Bond, Administration on Community Living, Administration on Intellectual and Developmental Disabilities, Office of Program Support, One Massachusetts Avenue NW., Room 4302, Washington, DC 20201, 202–690–5841 or by email to: *Valerie.Bond@aoa.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department specifically requests comments on: (a) Whether the proposed Collection of information is necessary for the proper performance of the function 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) the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden information to be collected; and (e) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection technique comments and or other forms of information technology. Consideration will be given to comments and suggestions submitted within 30 days of this publication. In the **Federal Register** of February 10, 2014 (Vol. 79 No.27 Page 7676) the agency requested comments on the proposed collection of information. Comments were received and a summary provided in the Supporting Statement.

Respondents

56 State Developmental Disabilities Councils.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Developmental Disabilities Council 5-Year State Plan	56	1	367	20,552

Estimated Total Annual Burden Hours: 20,552.

DATES: Submit written comments on the collection of information by August 25, 2014.

ADDRESSES: Submit written comments on the collection of information by fax 202.395.5806 or by email to *OIRA_submission@omb.eop.gov,* Attn: OMB Desk Officer for ACL, Office of Information and Regulatory Affairs, OMB.

Dated: July 18, 2014.

Kathy Greenlee,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2014–17586 Filed 7–24–14; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the Presidential Commission for the Study of Bioethical Issues

AGENCY: Presidential Commission for the Study of Bioethical Issues, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: The Presidential Commission for the Study of Bioethical Issues (the Commission) will conduct its eighteenth meeting on August 20, 2014. At this meeting, the Commission will discuss the BRAIN Initiative and ongoing work in neuroscience.

DATES: The meeting will take place Wednesday, August 20, 2014, from 9 a.m. to approximately 5 p.m.

ADDRESSES: Hamilton Crowne Plaza Hotel, 1001 14th St. NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Hillary Wicai Viers, Communications Director, Presidential Commission for the Study of Bioethical Issues, 1425 New York Avenue NW., Suite C–100, Washington, DC 20005. Telephone: 202–233–3960. Email: *Hillary.Viers@bioethics.gov.* Additional information may be obtained at *www.bioethics.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act of 1972, Public Law 92–463, 5 U.S.C. app. 2, notice is hereby given of the eighteenth meeting of the Commission. The meeting will be open to the public with attendance limited to space available. The meeting will also be webcast at *www.bioethics.gov.*

Under authority of Executive Order 13521, dated November 24, 2009, the President established the Commission. The Commission is an expert panel of not more than 13 members who are drawn from the fields of bioethics, science, medicine, technology, engineering, law, philosophy, theology, or other areas of the humanities or social sciences. The Commission advises the President on bioethical issues arising from advances in biomedicine and related areas of science and technology. The Commission seeks to identify and promote policies and practices that ensure scientific research, health care delivery, and technological innovation are conducted in a socially and ethically responsible manner.

The main agenda item for the Commission's eighteenth meeting is to discuss the BRAIN Initiative and ongoing work in neuroscience.

The draft meeting agenda and other information about the Commission, including information about access to the webcast, will be available at *www.bioethics.gov.*

The Commission welcomes input from anyone wishing to provide public comment on any issue before it. Respectful debate of opposing views and active participation by citizens in public exchange of ideas enhances overall public understanding of the issues at hand and conclusions reached by the Commission. The Commission is particularly interested in receiving comments and questions during the meeting that are responsive to specific sessions. Written comments will be accepted at the registration desk and comment forms will be provided to members of the public in order to write down questions and comments for the Commission as they arise. To accommodate as many individuals as possible, the time for each question or comment may be limited. If the number of individuals wishing to pose a question or make a comment is greater than can reasonably be accommodated during the scheduled meeting, the Commission may make a random selection.

Written comments will also be accepted in advance of the meeting and are especially welcome. Please address written comments by email to *info@bioethics.gov,* or by mail to the following address: Public Commentary, Presidential Commission for the Study of Bioethical Issues, 1425 New York Avenue NW., Suite C–100, Washington DC 20005. Comments will be publicly available, including any personally identifiable or confidential business information that they contain. Trade secrets should not be submitted.

Anyone planning to attend the meeting who needs special assistance, such as sign language interpretation or other reasonable accommodations, should notify Esther Yoo by telephone at (202) 233–3960, or email at *Esther.Yoo@bioethics.gov* in advance of the meeting. The Commission will make every effort to accommodate persons who need special assistance.

Dated: July 17, 2014.

Lisa M. Lee,

Executive Director, Presidential Commission for the Study of Bioethical Issues.

[FR Doc. 2014–17563 Filed 7–24–14; 8:45 am]

BILLING CODE 4154–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10521 and CMS–10463]

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 *August 25, 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:* New collection (Request for a new OMB control number); *Title of Information Collection:* Improving Quality of Care in Medicaid and CHIP through Increased Access to Preventive Services State Survey; *Use:* The survey will be used to gain a better understanding of state efforts to increase the utilization of preventive services and to develop resources (including educational and outreach resources) to help states increase the utilization of these services. The results will provide a baseline regarding the coverage of preventive services and will help us identify ways to assist states with materials focusing on prevention and technical assistance. The survey has been revised subsequent to the publication of the 60-day **Federal Register** notice (79 FR 20211).

Form Number: CMS–10521 (OMB control number: 0938—New); *Frequency:* Once; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 51; *Total Annual Responses:* 51; *Total Annual Hours:* 128. (For policy questions regarding this collection contact Mary Beth Hance at 410–786–4299.)

2. *Type of Information Collection Request:* Revision to a currently approved collection; *Title of Information Collection:* Cooperative Agreement to Support Navigators in Federally-facilitated and State Partnership Exchanges; *Use:* Section 1311(i) of the Affordable Care Act requires Exchanges (Marketplaces) to establish a Navigator grant program as part of its function to provide consumers with assistance when they need it. Navigators will assist consumers by providing education about and facilitating selection of qualified health plans (QHPs) within Marketplaces, as well as other required duties. Section 1311(i) requires that a Marketplace operating as of January 1, 2014, must establish a Navigator Program under which it awards grants to eligible individuals or entities who satisfy the requirements to be Exchange Navigators. For Federally-facilitated Marketplaces (FFMs) and State Partnership Marketplaces (SPMs), we will be awarding these grants. Navigator awardees must provide weekly, monthly, quarterly, and annual progress reports to us on the activities performed during the grant period and any sub-awardees receiving funds. We have modified the data collection requirements for the weekly, monthly, quarterly, and annual reports that were provided in the 60-day **Federal Register** notice (79 FR 20211).

Form Number: CMS–10463 (OMB control number: 0938–1215); *Frequency:* Annually; Quarterly, Monthly, Weekly; *Affected Public:* Private sector; *Number of Respondents:* 99; *Total Annual Responses:* 5,148; *Total Annual Hours:* 49,512. (For policy questions regarding this collection contact Julia Dreier at 301–492–4123.)

Dated: July 22, 2014.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2014–17555 Filed 7–24–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9086–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—April Through June 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 April through June 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.

BILLING CODE 4120–01–C

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	JoAnna Baldwin	(410) 786-7205
X One-time Notices Regarding National Coverage Provisions	JoAnna Baldwin	(410) 786-7205
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	Jamie Hermansen	(410) 786-2064
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*.

Dated: July 18, 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: July 26, 2013 (78 FR 45233), November 8, 2013 (78 FR 67153), January 31, 2014 (79 FR 5419), and April 25, 2014 (79 FR 22976). 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 (April through June 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 Percutaneous Image-guided Lumbar Decompression (PILD) for Lumbar Spinal Stenosis (LSS)use CMS-Pub. 100-03, Transmittal No. 167.

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)
85	Issued to a specific audience, not posted to Internet/ Intranet due to Confidentiality of Instruction
86	Contractor Implementation of Change Requests and Compliance with Technical Direction Letters Sample Cover Letter/Attestation Statement CR Implementation Report (CRIR) Template TDL Compliance Report (TCR) Template
	Medicare Benefit Policy (CMS-Pub. 100-02)
187	Update to the Medicare Benefit Policy Manual to Restore Missing Air Ambulance Definitions Air Ambulance Services
188	Updates and Clarifications to the Hospice Policy Chapter of the Benefit Policy Manual Requirements - General Timing and Content of Certification Election, Revocation, and Change of Hospice

	Hospice Discharge Election by Managed Care Enrollees Drugs and Biologicals Coinsurance Respite Care Coinsurance Benefit Coverage Nursing Care Physicians' Services Nurse Practitioners as Attending Physicians Short-Term Inpatient Care Medical Appliances and Supplies Other Items and Services Continuous Home Care (CHC Respite Care Other Issues Non-core Services Limitation on Liability for Certain Hospice Coverage Denials Documentation Limitations on Payments for Inpatient Care Counting Beneficiaries for Calculation Special Modalities
189	Invalidation of National Coverage Determination 140.3 - Transsexual Surgery Services Related to and Required as a Result of Services Which Are Not Covered Under Medicare Services Related to and Required as a Result of Services Which Are Not Covered Under Medicare
Medicare National Coverage Determination (CMS-Pub. 100-03)	
166	Fluorodeoxyglucose (FDG) Positron Emission Tomography (PET) for Solid Tumors (This CR rescinds and fully replaces CR8468/TR2873 dated February 6, 2014) Positron Emission Tomography (FDG PET) for Oncologic Conditions
167	Percutaneous Image-guided Lumbar Decompression (PILD) for Lumbar Spinal Stenosis (LSS) Percutaneous image-guided lumbar decompression for lumbar spinal Stenosis
168	Fluorodeoxyglucose (FDG) Positron Emission Tomography (PET) for Solid Tumors (This CR rescinds and fully replaces CR8468/TR2873 dated February 6, 2014) Positron Emission Tomography (FDG PET) for Oncologic Conditions
169	Invalidation of National Coverage Determination 140.3 - Transsexual Surgery Transsexual Surgery
Medicare Claims Processing (CMS-Pub. 100-04)	
2918	Analysis and Implementation of Non-Medical Code Set Edit Bypass for Contractor Initiated Adjustment Claims in the Fiscal Intermediary Shared System (FISS)
2919	New Waived Tests
2920	Remittance Advice Remark and Claims Adjustment Reason Code and Medicare Remit Easy Print and PC Print Update
2921	Internet Only Manual Updates to Pub. 100-01, 100-02 and 100-04 to Correct Errors and Omissions

	Provider Charges to Beneficiaries Annual Updates to the SNF Pricer Other Excluded Services Beyond the Scope of a SNF Part A Benefit Other Services Excluded from SNF PPS and Consolidated Billing Ambulance Services Screening and Preventive Services Physician's Services and Other Professional Services Excluded From Part PPS Payment and the Consolidated Billing Requirement
2922	Medicare Claims Processing Pub. 100-04 Chapter 25 Update Uniform Bill - Form CMS-1450 Form Locators 43-81 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 Billing with Form CMS-1450
2923	April Update to the CY 2014 Medicare Physician Fee Schedule Database (MPFSDB)
2924	July 2013 Integrated Outpatient Code Editor (I/OCE) Specifications Version 14.2
2925	Corrections to the Medicare Claims Processing Manual Foreword Liability Considerations for Bundled Services CWF General Instruction Liability Considerations for Bundled Services Line-Item Modifiers Related to Reporting of Non-covered Charges When Covered and Non-covered Services Are on the Same Outpatient Claim Claims Processing Requirements for Financial Limitations Physician Fee Schedule Payment Policy Indicator File Record Layout General Billing Requirements Payment Coding That Results from Processing Noncovered Charges
2926	Chapter 29 Appeals Update (Includes Post-DOMA Guidance and Signature Requirement for Appointment of Representatives and Assignment of Appeal Rights CMS Decisions Subject to the Administrative Appeals Process Who May Appeal Steps in the Appeals Process: Overview Where to Appeal Procedures to Follow When a Party Fails to Establish Good Cause Amount in Controversy General Requirements Principles for Determining Amount in Controversy Aggregation of Claims to Meet the Amount in Controversy Appointment of Representative - Introduction How to Make and Revoke an Appointment When and Where to Submit the Appointment Rights and Responsibilities of a Representative Duration of Appointment Curing a Defective Appointment of Representative How to Make and Revoke a Transfer of Appeal Rights

	Curing a Defective Transfer of Appeal Rights Medicare Secondary Payer (MSP) Specific Limitations or Additional Requirements With Respect to the Appointment of Representatives Fraud and Abuse – Authority Appeals of Claims Involving Excluded Providers, Physicians, or Other Suppliers Required Elements in Appeals Correspondence General Information Appeal Decision Involving Multiple Beneficiaries Filing a Request for Redetermination The Redetermination The Redetermination Decision Dismissals Dismissal Letters Requests for U.S. District Court Review by a Party Medicare Redetermination Notice (For Partly or Fully Unfavorable Redeterminations) Medicare Redetermination Notice (For Fully Favorable Redeterminations) System and Processing requirements for Use of Secure Internet Portal/Application to Support Appeals Activities Reconsideration - The Second Level of Appeal Filing a Request for a Reconsideration Administrative Law Judge (ALJ) Hearing – The Third Level of Appeal Departmental Appeals Board – Appeals Council - The Fourth Level of Appeal District Court Review - The Fifth Level of Appeal Model Dismissal Notices
2927	April 2014 Update of the Ambulatory Surgical Center (ASC) Payment System
2928	Enforcement of the 5 day Payment Limit for Respite Care Under the Hospice Medicare Benefit
2929	Update to Pub. 100-04, Medicare Claims Processing Manual, Chapter 11 to Provide Language-Only Changes for Updating ICD-10 and ASC X12 Requirement for RNHCI Election
2930	Update to Pub. 100-04, Medicare Claims Processing Manual, Chapter 11 to Provide Language-Only Changes for Updating ICD-10 and ASC X12
2931	Aprepitant for Chemotherapy-Induced Emesis Billing and Payment Instructions for A/B MAC 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
2932	Fluorodeoxyglucose (FDG) Positron Emission Tomography (PET) for Solid Tumors (This CR rescinds and fully replaces CR8468/TR2873 dated February 6, 2014
2933	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
2934	April Update to the CY 2014 Medicare Physician Fee Schedule Database (MPFSDB)
2935	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
2936	July 2014 Quarterly Average Sales Price (ASP) Medicare Part B Drug Pricing Files and Revisions to Prior Quarterly Pricing Files
2937	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 276/277 Claim Status Request and Response 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 Claim Status Request/Response Transaction Standard
2938	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2939	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2940	Update for the Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Competitive Bidding Program (CBP) - July 2014
2941	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2942	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2943	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2944	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
2945	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2946	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2947	Medicare System Updates to Include Splints, Casts and Certain Intraocular Lenses Payment Category Indicators in the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Fee Schedule File and Alpha-Numeric HCPCS **file**
2948	Calendar Year (CY) 2014 Annual Update for Clinical Laboratory Fee Schedule and Laboratory Services Subject to Reasonable Charge Payment - REVISION
2949	Adjustment to Fiscal Intermediary Shared System (FISS) Consistency Edit to Implement National Uniform Billing Committee (NUBC)

	Revision to Occurrence Span Code (OSC) Definition for Code 72.
2950	Adjustment to Fiscal Intermediary Shared System (FISS) Consistency Edit to Implement National Uniform Billing Committee (NUBC) Revision to Occurrence Span Code (OSC) Definition for Code 72.
2951	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
2952	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
2953	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2954	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2955	Mandatory Reporting of an 8-Digit Clinical Trial Number on Claims General
2956	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2957	July 2014 Integrated Outpatient Code Editor (I/OCE) Specifications Version 15.2
2958	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2959	Percutaneous Image-guided Lumbar Decompression (PILD) for Lumbar Spinal Stenosis (LSS)
2960	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2961	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2962	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2963	Common Edits and Enhancements Modules (CEM) Code Set Update
2964	Indian Health Services (IHS) Hospital Payment Rates for Calendar Year 2014
2965	Medicare Claims Processing Pub. 100-04 Chapter 24 Update A - Response to a non - "unusual circumstance" waiver request Number of ASCS Enforcement Reviews to be Conducted by the RRB SMAC EDI Enrollment and EDI Claim Record Retention H - Notice from the Railroad Retirement Board Speciality MAC to a Provider with a Pre-Established Record in PES that Paper Claims Will be Denied as Result of the Requirements that a Provider Submit Claims to One or More Other Medicare Contractors Electronically B - Denial of an "unusual circumstance" waiver request C - Request for Documentation from Provider Selected for Review to Establish Entitlement to Submit Claims on Paper D - Notice that paper claims will be denied effective with the 91st calendar day after the original letter as result of non-response to that letter E - Notice that paper claims will be denied effective with the 91st calendar day after the original letter as result of determination that they provider is not eligible to submit paper claims F - Notice that determination reached that the provider is eligible to submit paper claims G - Notice from the Railroad Board Specialty Medicare Administrative Contractor (RRB SMAC) to a Provider that Has Just Begun to Submit Claims that Paper Claims Submitted by that Provider Will be Denied Network Service Vendor (NSV) Agreement
2966	Instructions for Downloading the Medicare ZIP Code File for October 2012
2967	Claim Status Category and Claim Status Codes Update
2968	Quarterly Update for the Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Competitive Bidding Program (CBP) - October 2014
2969	Quarterly Update to the Correct Coding Initiative (CCI) Edits, Version 20.3, Effective October 1, 2014
2970	July 2014 Update of the Ambulatory Surgical Center (ASC) Payment System
2971	July 2014 Update of the Hospital Outpatient Prospective Payment System (OPPS Type of Bill Method of Payment for Clinical Laboratory Tests - Place of ServiceVariation Hospital Billing Under Part B Critical Access Hospital (CAH) Outpatient Laboratory Service
2972	Issued to a specific audience, not posted to Internet/ Intranet due to Confidentiality of Instruction
2973	Issued to a specific audience, not posted to Internet/ Intranet due to Sensitivity of Instruction
2974	July Update to the CY 2014 Medicare Physician Fee Schedule Database (MPFSDB)
2975	Issued to a specific audience, not posted to Internet/ Intranet due to Confidentiality of Instruction
2976	Changes to the Laboratory National Coverage Determination (NCD) Software
2977	Clarification of Billing Instructions Related to the Home Health Benefit Split Percentage Payment of Episodes Home health Consolidated Billing Edits in Medicare Systems More Than One Agency Furnished Home Health Services Grouper Links Assessment and Payment Submission of Request for Anticipated Payment (RAP) Claim Submission and Processing Payment, Claim Adjustments and Cancellations Adjustments of Episode Payment - Low Utilization Payment Adjustments (LUPAs) Adjustments of Episode Payment – Early or Later Episodes Adjustments of Episode Payment - Outlier Payments Glossary and Acronym List Home Health Prospective Payment System (HH PPS) Consolidated Billing General Guidelines for Processing Home Health Agency (HHA) Claims Therapy Editing Nonroutine Supply Editing Other Editing Related to Home Health Consolidated Billing Home Health Consolidated Billing and Supplies Provided by DMEPOS

	Suppliers National Home Health Prospective Payment Episode History File Other Editing for HH PPS Episodes Coordination of HH PPS Claims Episodes With Inpatient Claim Types Request for Anticipated Payment (RAP HH PPS Claims Collection of Deductible and Coinsurance from Patient Billing for Nonvisit Charges Beneficiary-Driven Demand Billing Under HH PPS No Payment Billing General Input/Output Record Layout Decision Logic Used by the Pricer on RAPs Decision Logic Used by the Pricer on Claims Medical and Other Health Services Not Covered Under the Plan of Care (Type of Bill 034x Osteoporosis Injections as HHA Benefit Billing and Payment Procedures Regarding Ownership and CMS Certification Numbers (CCNs) Billing Procedures for an Agency Being Assigned Multiple CCNs or a Change in CCN Timeliness and Limitations of CWF Response
2978	Issued to a specific audience, not posted to Internet/ Intranet due to Confidentiality of Instruction
Medicare Secondary Payer (CMS-Pub. 100-05)	
101	Additional Electronic Correspondence Referral System (ECRS) Reason Codes COBC Electronic Correspondence Referral System (ECRS)
Medicare Financial Management (CMS-Pub. 100-06)	
236	Revisions to Pub. 100-06, Section 100.2 – Amending Letter of Credit Amending Letters of Credit
Medicare State Operations Manual (CMS-Pub. 100-07)	
115	New to State Operations Manual (SOM) Appendix Y- Organ Procurement Organization (OPO) Interpretive Guidance
116	Revised State Operations Manual (SOM), Appendix A, Survey Protocol, Regulations and Interpretive Guidelines for Hospitals Survey Protocol, Regulations and Interpretive Guidelines for Hospitals/A-0957/§482.51(b)(4)/There must be adequate provisions for immediate post-operative care. Survey Protocol, Regulations and Interpretive Guidelines for Hospitals/A-0409/§482.23(c)(4)/Blood transfusions and intravenous medications must be administered in accordance with State law and approved medical staff policies and procedures Survey Protocol, Regulations and Interpretive Guidelines for Hospitals/A-0412/§482.23(c)(6)/The hospital may allow a patient (or his or her caregiver/support person where appropriate) to self-administer both hospital-issued medications and the patient's own medications brought into the hospitals defined and specified in the hospital's policies and procedures Survey Protocol, Regulations and Interpretive Guidelines for Hospitals/A-0405/§482.23(c)Standard: Preparation and Administration of Drugs
117	Revision to Medicare State Operations Manual (SOM), Chapter 9 – Exhibits 37 Model Letter Announcing Validation Survey of Deemed Status Provider/Supplier 162 Model Letter: Request for a Plan of Correction Following an Initial Survey for Swing-bed Approval in a Hospital 196 Model Letter Announcing to Deemed Status Provider/Supplier after a Validation Survey that it does not Comply with all Medicare Conditions 199 Model Letter Announcing to Deemed Status Provider/Supplier after a Substantial Allegation Survey that it will Undergo a Full Survey Authorization by Deemed Provider/Supplier Selected for Validation Survey Report of a Hospital Death Associated with Restraint or Seclusion (Form CMS-10455)
118	New Guidance Added to Chapter 7 – Survey and Enforcement Process for Skilled Nursing Facilities and Nursing Facilities Definitions and Acronyms Informal Dispute Resolution After Request to Waive Hearing Mandatory Elements of Informal Dispute Resolution Independent Informal Dispute Resolution (Independent IDR) Introduction Purpose Independent Informal Dispute Resolution Requirements Applicability of the Independent Informal Dispute Resolution Process Key Elements of Independent Informal Dispute Resolution Qualifications of an Independent Informal Dispute Resolution Entity or Person(s Approval of an Independent Informal Dispute Resolution process State Budget and Payment for Expenses Independent Informal Dispute Resolution Recommendation and Final Decision Additional Elements for Federal Independent Informal Dispute Resolution process Notice Requirements When Immediate Jeopardy Exists Reduction of a Civil Money Penalty by 50 Percent for Self-Reporting and Prompt Correction of Noncompliance When Penalty Is Due and Payable When a Civil Money Penalty Subject to Being Collected and Placed in an Escrow Account is Imposed After Final Administrative Decision No Hearing Requested MODEL LETTER TO INVOLVED RESIDENT, RESIDENT REPRESENTATIVE AND/OR STATE OMBUDSMAN – OPPORTUNITY TO PROVIDE WRITTEN COMMENT (INDEPENDENT INFORMAL DISPUTE RESOLUTION (IDR) HAS BEEN REQUESTED) After Substantial Compliance is Achieved After Effective Date of Termination

	Disposition of Collected Civil Money Penalty Collected From Medicare or Dually-Participating Facility Entities Other Than Nursing Homes May Receive Collected Civil Money Penalty Funds From the State Entities Other Than Nursing Homes May Receive Collected Civil Money Penalty Funds From the State Collected Amounts From Dually-Participating Facility or Medicare Facility and Held in Esc Use of Civil Money Penalty Funds MODEL LETTER TO PROVIDER (SEND WITH FORM CMS-2567) (IMMEDIATE JEOPARDY DOES NOT EXIST) MODEL LETTER NOTIFYING PROVIDER OF RESULTS OF REVISIT MODEL LETTER TO PROVIDER (IMPOSITION OF REMEDIES) (IMMEDIATE JEOPARDY DOES NOT EXIST) MODEL LETTER TO PROVIDER (IMPOSITION OF REMEDIES) (IMMEDIATE JEOPARDY EXISTS) NOTICE OF IMPOSITION OF A CIVIL MONEY PENALTY (INSERT TO FORMAL NOTICE) NOTICE OF PAYMENT AMOUNT DUE AND PAYABLE NOTICE OF PAYMENT AMOUNT DUE FOR PLACEMENT IN ESCROW (IIDR COMPLETE OR NOT TIMELY REQUESTED-FACILITY IS FILING FORMAL APPEAL) Purpose - To Provide Facilities an Opportunity To Informally Dispute Cited Deficiencies After a Survey
Medicare Program Integrity (CMS-Pub. 100-08)	
510	Clarification to Pub. 100-02, Medicare Benefit Policy Manual Regarding Antigens and Deletion of Section 13.14 from Chapter 13 of Pub. 100-08, Medicare Program Integrity Manual Evaluation of Local Coverage Determination (LCD) Topics for National Coverage Determination (NCD) Consideration
511	Issued to a specific audience not posted to Internet/ Intranet due to Confidentiality of Instruction
512	Revision to the Program Integrity Manual, Chapter 3, section 3.3 Policies and Guidelines Applied During Review
513	Issued to a specific audience not posted to Internet/ Intranet due to Confidentiality of Instruction
514	Update to CMS Publication 100-08, Chapter 15 Potential Changes of Ownership Under the Principles of § 489.18 – Direct Referral to the Regional Office Required Radiation Therapy Centers Practice Location Information Form CMS-855A and Form CMS-855B Signatories Delegated Officials Submission of Registration Applications Registration Letters Certified Providers and Certified Suppliers Temporary Moratoria

	Model Approval Recommended Letters Initial Enrollments Requiring Referral to the State Initial Enrollments Requiring Direct Referral to the Regional Office (Including Federally Qualified Health Centers) Changes of Information Changes of Information Requiring Referral to the State Changes of Information Requiring Direct Referral to the Regional Office Potential Changes of Ownership Under the Principles of § 489.18 Potential Changes of Ownership Under the Principles of § 489.18 - Referral to the State Required Federally Qualified Health Centers (FQHCs)
515	Issued to a specific audience not posted to Internet/ Intranet due to Confidentiality of Instruction
516	Issued to a specific audience not posted to Internet/ Intranet due to Confidentiality of Instruction
517	Update to Surety Bond Collection Procedures Model Letters for Claims against Surety Bonds Claims against Surety Bonds
518	Issued to a specific audience not posted to Internet/ Intranet due to Confidentiality of Instruction \
519	Revision to CMS Publication 100-08, Chapter 15 Individual Practitioners Speech Language Pathologists in Private Practice Audiologists Certified Nurse-Midwives Certified Registered Nurse Anesthetists (CRNAs Clinical Nurse Specialists Clinical Psychologists Clinical Social Workers Nurse Practitioners Occupational Therapists in Private Prac Physical Therapists in Private Practice Physicians Physician Assistants (PAs) Psychologists Practicing Independently Registered Dietitians Anesthesiology Assistants
520	Issued to a specific audience not posted to Internet/ Intranet due to Confidentiality of Instruction
521	Submission of Community Mental Health Center (CMHC) Certifications of Compliance with Section 485.918(b)(1) Release of Information CMHC 40 Percent Rule Section 4 of the Form CMS-855I Special Procedures for Physicians and Non-Physician Practitioners Community Mental Health Centers (CMHCs)
522	Issued to a specific audience not posted to Internet/ Intranet due to Confidentiality of Instruction
523	Update to CMS Pub. 100-08, Chapter 3 Reimbursing Providers and HIHs for Additional Documentation

524	Issued to a specific audience not posted to Internet/ Intranet due to Confidentiality of Instruction
525	Update to Form CMS-855 Application Processing Sections of CMS Pub. 100-08, Chapter 15 Sections of the Forms CMS-855A, CMS-855B, and CMS-855I Medicare Contractor Duties Changes of Information and Complete Form CMS-855 Applications Correspondence Address and E-mail Addresses Contact Persons Application Review and Verification Activities Receipt/Review of Application and Verification of Data Receipt/Review of Paper Applications Receipt/Review of Internet-Based PECOS Applications Verification of Data Requesting Missing/Clarifying Data/Documentation Paper Applications Internet-Based PECOS Applications General Principles – Paper and Internet-Based PECOS Applications Receiving Missing/Clarifying Data/Documentation Failure to Submit Requested Data/Documentation Paper Applications Internet-Based PECOS Applications Reserved for Future Use Reserved for Future Use Requesting and Receiving Clarifying Information Basic Information (Section 1 of the Form CMS-855)
526	Issued to a specific audience not posted to Internet/ Intranet due to Confidentiality of Instruction
527	Provider Notice on MAC Web Sites Provider Notice
528	Proof of Delivery Supplier Documentation
Medicare Contractor Beneficiary and Provider Communications (CMS-Pub. 100-09)	
28	Revision of Pub. 100-09, Chapter 6, Medicare Contractor Beneficiary and Provider Communications Manual; Clearance of MAC Internet-Based Provider Portal Handbook; and Deletion of IOM Pub. 100-09, Chapter 3, Provider Inquiries. Introduction to Provider Customer Service Program (PCSP) PCSP Electronic Mailing Lists (Listservs) Provider Customer Service Program User Group (PCUG) Calls PCSP Contractor Sharing and Collaboration Team Room Integration of POE, PCC and PSS Activities in the PCSP Provider Outreach and Education (POE) Internal Development of Provider Issues Partnering with External Entities Data Analysis Error Rate Reduction Data Inquiry Analysis Medical Review Referrals Provider Education
	Provider Bulletins/Newsletters Direct Mailings for the PCSP Training for New Medicare Providers Training Tailored for Small Medicare Providers Educational Topics Local Coverage Determinations (LCDs) Education Resulting from Medical Review Referrals Medicare Preventive Service Benefits Electronic Claims Submissions Remittance Advice (RA POE Materials POE Advisory Groups (POE AGs) Ask-the-Contractor" Teleconferences (ACTs POE Reporting Provider Service Plan (PSP) Provider Customer Service Program Activity Report (PAR) Error Rate Reduction Plan (ERRP Additional Reporting charging Fees to Providers for Medicare Education and Training No Charge Fair and Reasonable Fees Fees for Materials Available on Contractors' Provider Education Websites Fees for Education and Training Activities Fees for Videotapes or Recordings of Education and Training Activities Prohibitions Reimbursement from Providers for POE Staff Attendance at Provider Meetings Excess Revenues from Provider Participant Fees Refunds/Credits for Cancellation of Education and Training Activities Considerations and Recordkeeping for Fee Collection Provider Contact Center (PCC) Inquiry Triage Process Responding to Coding Questions Provider Telephone Inquiries General Inquiries Line Teletypewriter (TTY) Lines Inbound Calls Troubleshooting Problems Requesting Changes to Telephone Configurations Hours of Operation PCC Closures Pre-Approved PCC Closures Planned PCC Closures that are not Pre-Approved Closures Emergency PCC Closures Providing Busy Signals Queue Message PCC Staffing CSR Equipment Requirements CSR Identification to Callers Remote Monitoring Access

	Contingency Plans Guidelines for High Quality Responses to Telephone Inquiries Telephone Response Quality Monitoring Program Telephone Responses -- Quality Call Monitoring (QCM) Program Minimum Requirements Recording Calls QCM Calibration CMS Monitoring Provider Written Inquiries Controlling Written Inquiries Telephone Responses to Written Inquiries E-mail and Fax Responses to Written Inquiries Guidelines for High Quality Responses to Written Inquiries Stock Language/Form Letters Written Response Quality Monitoring Program Written Responses -- Quality Written Correspondence Monitoring (QWCM) Program Minimum Requirements QWCM Calibration Replying to Correspondence from Members of Congress Walk-In Inquiries Guidelines for Walk-In Service Complex Provider Inquiries Complex Beneficiary Inquiries Inquiry Tracking Updates for the CMS Standardized Provider Inquiry Chart Fraud and Abuse Surveys Provider Satisfaction Survey Telephone Satisfaction Survey Provider Education Website Satisfaction Survey PCSP Staff Development and Education POE Staff Training PCC Staff Development and Training Required Training PCC Training Program Training Schedule Training Closures of More Than Four Hours Provider Notifications Training Closure Information Reporting PRRS Staff Training Provider Self-Service (PSS) Technology Interactive Voice Response System (IVR) Provider Education Website General Requirements Webmaster and Attestation Requirements Feedback Mechanism Contents Dissemination of Information from CMS to Providers Frequently Asked Questions (FAQs) Quarterly Provider Update (QPU

	Internet-based Provider Educational Offerings Provider Education Website Promotion Electronic Mailing List (Listserv) Targeted Electronic Mailing Lists (Listservs) Electronic Mailing List (Listserv) Promotion Social Media Contractor Internet-based Provider Portals PCSP Performance Management POE - Electronic Mailing List (Listserv) Subscribership Telephone Standards Customer Service Representative (CSR) Callback Rate Call Completion Average Speed of Answer (ASA) Callbacks QCM Performance Standards Written Inquiries QWCM Performance Standards General Inquiries Timeliness PRRS Timeliness - Provider Inquiries PRRS Timeliness -- Complex Beneficiary Inquiries Congressional Inquiries Timeliness PCSP Data Reporting Provider Inquiries Evaluation System (PIES Access to PIES Due Date for Data Submission Data to be Reported Monthly Provider Customer Service Program Contractor Information Database (PCID) Access to PCID Contract Data to be Reported in PCID Other Data to be Reported in PCID Inquiry Tracking Data to be Reported in PCID Disclosure of Information POE Data to be Reported in PCID Provider Electronic Mailing List (Listserv) Subscriber Data to be Reported in PCID Special Initiatives to be Reported in PCID Emergency PCC Closure Data to Be Reported in PCID Telecommunications Service Interruptions to be Reported in PCID QCM Data Reporting QWCM Data Reporting Reporting Provider and Beneficiary Inquiry Workload Data in the Contractor Reporting of Operational Workload Data (CROWD PCC Training Closure Information to be Reported in PCID
29	Revision of Pub. 100-09, Chapter 6, Medicare Contractor Beneficiary and Provider Inquiries. Introduction to Provider Customer Service Program (PCSP) PCSP Electronic Mailing Lists (Listservs) Provider Customer Service Program User Group (PCUG) Calls PCSP Contractor Sharing and Collaboration Team Room

	Integration of POE, PCC and PSS Activities in the PCSP Provider Outreach and Education (POE) Internal Development of Provider Issues Partnering with External Entities Data Analysis Error Rate Reduction Data Inquiry Analysis Medical Review Referrals Provider Education Provider Bulletins/Newsletters Direct Mailings for the PCSP Training for New Medicare Providers Training Tailored for Small Medicare Providers Educational Topics Local Coverage Determinations (LCDs) Education Resulting from Medical Review Referrals Medicare Preventive Service Benefits Electronic Claims Submissions Remittance Advice (RA POE Materials POE Advisory Groups (POE AGs) Ask-the-Contractor" Teleconferences (ACTs POE Reporting Provider Service Plan (PSP) Provider Customer Service Program Activity Report (PAR) Error Rate Reduction Plan (ERRP Additional Reporting charging Fees to Providers for Medicare Education and Training No Charge Fair and Reasonable Fees Fees for Materials Available on Contractors' Provider Education Websites Fees for Education and Training Activities Fees for Videotapes or Recordings of Education and Training Activities Prohibitions Reimbursement from Providers for POE Staff Attendance at Provider Meetings Excess Revenues from Provider Participant Fees Refunds/Credits for Cancellation of Education and Training Activities Considerations and Recordkeeping for Fee Collection Provider Contact Center (PCC) Inquiry Triage Process Responding to Coding Questions Provider Telephone Inquiries General Inquiries Line Teletypewriter (TTY) Lines Inbound Calls Troubleshooting Problems Requesting Changes to Telephone Configurations Hours of Operation PCC Closures

	Pre-Approved PCC Closures Planned PCC Closures that are not Pre-Approved Closures Emergency PCC Closures Providing Busy Signals Queue Message PCC Staffing CSR Equipment Requirements CSR Identification to Callers Remote Monitoring Access Contingency Plans Guidelines for High Quality Responses to Telephone Inquiries Telephone Response Quality Monitoring Program Telephone Responses -- Quality Call Monitoring (QCM) Program Minimum Requirements Recording Calls QCM Calibration CMS Monitoring Provider Written Inquiries Controlling Written Inquiries Telephone Responses to Written Inquiries E-mail and Fax Responses to Written Inquiries Guidelines for High Quality Responses to Written Inquiries Stock Language/Form Letters Written Response Quality Monitoring Program Written Responses -- Quality Written Correspondence Monitoring (QWCM) Program Minimum Requirements QWCM Calibration Replying to Correspondence from Members of Congress Walk-In Inquiries Guidelines for Walk-In Service Complex Provider Inquiries Complex Beneficiary Inquiries Inquiry Tracking Updates for the CMS Standardized Provider Inquiry Chart Fraud and Abuse Surveys Provider Satisfaction Survey Telephone Satisfaction Survey Provider Education Website Satisfaction Survey PCSP Staff Development and Education POE Staff Training PCC Staff Development and Training Required Training PCC Training Program Training Schedule Training Closures of More Than Four Hours Provider Notifications Training Closure Information Reporting PRRS Staff Training Provider Self-Service (PSS) Technology

	Interactive Voice Response System (IVR) Provider Education Website General Requirements Webmaster and Attestation Requirements Feedback Mechanism Contents Dissemination of Information from CMS to Providers Frequently Asked Questions (FAQs) Quarterly Provider Update (QPU Internet-based Provider Educational Offerings Provider Education Website Promotion Electronic Mailing List (Listserv) Targeted Electronic Mailing Lists (Listservs) Electronic Mailing List (Listserv) Promotion Social Media Contractor Internet-based Provider Portals PCSP Performance Management POE - Electronic Mailing List (Listserv) Subscribership Telephone Standards Customer Service Representative (CSR) Callback Rate Call Completion Average Speed of Answer (ASA) Callbacks QCM Performance Standards Written Inquiries QWCM Performance Standards General Inquiries Timeliness PRRS Timeliness - Provider Inquiries PRRS Timeliness -- Complex Beneficiary Inquiries Congressional Inquiries Timeliness PCSP Data Reporting Provider Inquiries Evaluation System (PIES Access to PIES Due Date for Data Submission Data to be Reported Monthly Provider Customer Service Program Contractor Information Database (PCID) Access to PCID Contract Data to be Reported in PCID Other Data to be Reported in PCID Inquiry Tracking Data to be Reported in PCID Disclosure of Information POE Data to be Reported in PCID Provider Electronic Mailing List (Listserv) Subscriber Data to be Reported in PCID Special Initiatives to be Reported in PCID Emergency PCC Closure Data to Be Reported in PCID Telecommunications Service Interruptions to be Reported in PCID QCM Data Reporting QWCM Data Reporting Reporting Provider and Beneficiary Inquiry Workload Data in the Contractor

	Reporting of Operational Workload Data (CROWD PCC Training Closure Information to be Reported in PCID
Medicare End Stage Renal Disease Network Organizations (CMS Pub 100-14)	
00	None
Medicaid Program Integrity Disease Network Organizations (CMS Pub 100-15)	
2	Issued to a specific audience not posted to Internet/ Intranet due to Confidentiality of Instruction
Medicare Managed Care (CMS-Pub. 100-16)	
00	None
Medicare Business Partners Systems Security (CMS-Pub. 100-17)	
00	None
Demonstrations (CMS-Pub. 100-19)	
98	Affordable Care Act Bundled Payments for Care Improvement Initiative - Recurring File Updates Models 2 and 4 July 2014 Updates
99	Issued to a specific audience not posted to Internet/ Intranet due to Sensitivity of Instruction
100	Issued to a specific audience not posted to Internet/ Intranet due to Sensitivity of Instruction
101	Correction to CR 8599- Implementation of the Intravenous Immune Globulin (IVIG) demonstration
102	Issued to a specific audience not posted to Internet/ Intranet due to Sensitivity of Instruction
103	Issued to a specific audience not posted to Internet/ Intranet due to Confidentiality of Instruction
104	Implementing Payment Changes for FCHIP (Frontier Community Health Integration Project), Mandated by section 123 of MIPPA 2008 and as amended by section 3126 of the ACA of 2010
105	Affordable Care Act Bundled Payments for Care Improvement Initiative – Recurring File Updates Models 2 and 4 October 2014 Updates
One Time Notification (CMS-Pub. 100-20)	
1365	Reporting principal and interest amounts when refunding previously recouped money on the Remittance Advice (RA)
1366	Termination of the Common Working File ELGA, ELGH, HIQA, HIQH, and HUQA Part A Provider Queries
1367	Implementation of NACHA Operating Rules for Health Care Electronic Funds Transfers (EFT)
1368	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) - Additional Testing Week
1369	Clarification of Remittance Advice Code Combination Reports Generated by Shared Systems
1370	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 - February 1, 2014 version 3.0.4
1371	Instructions to Contractors for Implementing Section 5506 of the Affordable Care Act (ACA) - Preservation of Resident Cap Positions from Closed Teaching Hospitals – Rounds 1, 2, 3 and After
1372	Affordable Care Act (ACA) Bundled Payments for Care Improvement –

	Periodic Financial Transactions
1373	CWF Editing for Vaccines Furnished at Hospice – Correction
1374	Health Insurance Portability and Accountability Act (HIPAA) EDI Front End Updates for October 2014
1375	Adding New MSP Data Fields to the CWF Daily File
1376	Return Maintenance of the ANSILIST to the Durable Medical Equipment (DME) Medicare Administrative Contractors (MACs).
1377	Hewlett Packard Enterprise Services, LLC (HPES) Shared Systems Maintainer (SSM) support for Medicare Administrator Contractors (MACs) testing and inquiries for the Combined Common Edits/Enhancements Module (CCEM) for Part A and Part B
1378	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 - June 1, 2014 version 3.0.5
1379	Anesthesiologist/Certified Registered Nurse Anesthetist (CRNA) Related Services in a Method II Critical Access Hospital (CAH)
1380	Present on Admission (POA) Indicator Editing for Maryland Waiver Hospitals
1381	CEM Zip Code Analysis and Design
1382	Analysis and Design of the ASC X12 278 Transactions
1383	Implementation of a Prospective Payment System (PPS) for Federally Qualified Health Centers (FQHCs)
1384	Posting the Limiting Charge after Applying the Electronic Health Record (EHR) and Physician Quality Reporting System (PQRS) Negative Adjustments
1385	Additional States Requiring Payment Edits for DMEPOS Suppliers of Prosthetics and Certain Custom-Fabricated Orthotics. Update to CR 3959 and CR 8390
1386	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
1387	Clarification of Remittance Advice Code Combination Reports Generated by Shared Systems
1388	ICD-10 Conversion/Coding Infrastructure Revisions/ICD-9 Updates to National Coverage Determinations (NCDs)--Maintenance CR
1389	CWF, MCS and VMS Date of Birth (DOB) Analysis

Addendum II: Regulation Documents Published in the Federal Register (April through June 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-2Q14QPU.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 (April through June 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
Percutaneous Image-guided Lumbar Decompression for Lumbar Spinal Stenosis	NCD150.13	R167	05/16/2014	01/09/2013
ICD-10 Conversion/Coding Infrastructure Revisions/ICD-9 Updates to National Coverage Determinations (NCDs)	N/A	R133	05/23/2014	07/01/2014

Addendum V: FDA-Approved Category B Investigational Device Exemptions (IDEs) (April through June 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
G140034	ROCHE COBAS EGFR MUTATION TEST	04/03/2014
BB15945	ReCell Autologous Cell Harvesting Device (ReCell)	04/03/2014
G140035	Strattice Reconstructive Tissue Matrix	04/04/2014
G140039	EVERA MRI SURESCAN ICD SYSTEM CLINICAL STUDY	04/09/2014
G130185	BARREL VASCULAR RECONSTRUCTION DEVICE	04/10/2014
BB15963	Dermagraft, Human Fibroblast-Derived Dermal Replacement	04/11/2014
G140054	Medtronic Specify 5-6-5 / Medtronic Restore Advance	04/11/2014
G140040	Blanketrol III	04/17/2014
G130286	WEB Aneurysm Embolization System	04/17/2014
G130072	Ovinium DH Hip System	04/22/2014
G140043	Transcaval Access For Transcatheter Ortic Valve Replacement in Patients With No Good Options For Aortic Access	04/23/2014
G140046	PerMIT:Warfarin	04/23/2014
BB15998	Magnetic-Activated Cell Sorter (CliniMACS, Miltenyi) for CD34 Selection, Allogeneic, Matched-related PBPC	04/24/2014
G140048	Inferior Vena Cava Filters	04/25/2014
G140049	EON Implantable Pulse Generator (IPG) System (Model 3688), Libra Implantable Deep Brain Stimulation (DBS) Electrodes (Model 6145), Swift-Lock Anchor (Model 1192)	04/25/2014
G140050	Mi1000 Med-EL Concert Cochlear Implant	04/25/2014
BB15978	Nstride APS Kit	04/27/2014
BB15983	Magnetic Activated Cell Sorter (CliniMACS, Miltenyi) for CD34+ Selected Allogeneic Mismatched/Haplocompatible Related, G-CSF Mobilized Hematopoietic Stem Cells(HSCs); following Fludarbine and rATG, with or without Radiation	04/30/2014
G140056	Model 400 Aortic Valve Bioprothesis	05/01/2014
G140058	Therascreen BRAF V600E RGQ PCR Kit	05/01/2014
G140059	Corevalve Evolut R System	05/02/2014
G140060	Gore Tag Thoracic Branch Endoprothesis	05/02/2014
G140065	VENTANA anti-ALK (D5F3) Rabbit Monoclonal Primary Antibody	05/07/2014
G130264	Hot Axios Stend And Delivery System (With 10mm x 10mm Stent) HXS-10-10, Hot Axios Stend And Delivery System (With 15mm x 10mm Stent) HXS-15-10	05/08/2014
G140024	Saluda Medical External Trial System	05/16/2014
G140018	Saluda Medical External Trial System	05/16/2014
G140077	Liposorber LA-40S Adsorption Column	05/22/2014
G140083	Zeltiq Coolsculpting System	05/30/2014
G140080	XpreESS Multi-Sinus Dilation Tool, PathAssist LED Light Fiber, PathAssist Light Fiber, PathAssist Light Seeker	05/30/2014
G140087	Sinopsys Lacrimal Stent	06/03/2014
G140084	Pipeline Embolization Device Model FA-772XX-XX-FA-775XX-XX, Pipeline Embolization Device Model FA-712XX-XX-FA-715XX-XX	06/04/2014
G140082	ExAblate 4000 Typer 1.0 Transcranial magnetic resonance image	06/04/2014
G140091	Bead/Bead Block Compressible Microspheres (BeadBlock)	06/13/2014
G140092	Cardiac Resynchronization Therapy Efficacy Enhancements (CRTee) Clinical Study	06/13/2014
G140027	Transarterial embolization to avoid open prostatectomy in patients with severe benign prostatic hyperplasia (Embosphere Microspheres)	06/13/2014
G130256	SCULPTRA-2013-01	06/20/2014
G140093	Custom-Made, Non-Biodegradable, Antibiotic Cement Spacer	06/26/2014
G140099	VenaCure EVLT 400um Procedure Kit	06/27/2014

Addendum VI: Approval Numbers for Collections of Information (April through June 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, (April through June 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.			
Penrose-St. Francis Health Services 2222 N. Nevada Avenue Colorado Springs, CO 80907	060031	04/24/2014	CO
The Heart Hospital Baylor Denton 2809 S. Mayhill Road Denton, TX 76208	1194753590	06/02/2014	TX

Addendum VIII: American College of Cardiology's National Cardiovascular Data Registry Sites (April through June 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.		
Houston Medical Center	Warner Robins	GA
Tahlequah City Hospital	Tahlequah	OK
South County Hospital	Walefield	RI
Wolfson Children's Hospital	Jackonsville	FL
West Park Hospital	Cody	WY
MaryVale Hospital	Phoenix	AZ
Parkland Medical Center	Derry	NH
Sentara Northern Virginia Medical Center	Woodbridge	VA
Lovelace Regional Hospital	Roswell	NM
Wheaton Franciscan ? Elmbrook Memorial Campus	Brookfield	WI
Kaiser Foundation Hospital	Fontana	CA
Prairie Ridge Hospital and Health Services	Elbow Lake	MN
Hanover Hospital	Hanover	PA
St. Barnabas Hospital	Bronx	NY
Wellington Regional Medical Center	Wellington	FL
Carilion New River Valley Medical Center	Christiansburg	VA
The following facilities are terminated as of this quarter.		
Summit Medical Center (6/16/14)	Van Buren	AR
Yakima Valley Memorial Hospital (6/30/14)	Yakima	WA

Addendum IX: Active CMS Coverage-Related Guidance Documents (April through June 2014)

There were no CMS coverage-related guidance documents published in the April through June 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 JoAnna Baldwin (410-786-7205).

Addendum X: List of Special One-Time Notices Regarding National Coverage Provisions (April through June 2014)

There were no special one-time notices regarding national coverage provisions published in the April through June 2014 quarter. This information is available at www.cms.hhs.gov/coverage. For questions or additional information, contact JoAnna Baldwin (410 786 7205).

Addendum XI: National Oncologic PET Registry (NOPR) (April through June 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 April through June 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 (April through June 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.			
New York-Presbyterian/Weill Cornell Medical Center 525 East 68th Street New York, NY 10065	33-0101	08/22/2013	NY

Addendum XIII: Lung Volume Reduction Surgery (LVRS) (April through June 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 April through June 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 (April through June 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 April through June 2014 period. This information is available at www.cms.gov/MedicareApprovedFacilitie/BSF/list.asp#TopOfPage. For questions or additional information, contact Jamie Hermansen (410-786-2064).

Addendum XV: FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials (April through June 2014)

There were no FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials published in the April through June 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. 2014–17488 Filed 7–24–14; 8:45 am]

BILLING CODE 4120–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

The Eldercare Locator

SUMMARY: The Administration for Community Living (ACL) is announcing the application deadline and supplemental funding for the Eldercare Locator program. The Eldercare Locator program helps older adults and their families and caregivers find their way through the maze of services for older adults by linking to a trustworthy network of national, State, Tribal and community organizations and services through a nationally recognized toll-free number. The Eldercare Locator also provides older adults and caregivers who require more in depth support the opportunity to speak with highly trained eldercare consultants who can better triage the situation. The purpose of this notice is to award supplemental funds to the National Association of Area Agencies on Aging to provide for additional eldercare consultants.

Program Name: Eldercare Locator.
Award Amount: $250,000.
Project Period: 6/1/2013 to 5/31/2018.
Award Type: Cooperative Agreement.

Statutory Authority: The statutory authority for grants under this notice is contained in Title IV of the Older Americans Act (OAA) (42 U.S.C. 3032), as amended by the Older Americans Act Amendments of 2006. Statutory authority specifically for the Eldercare Locator is contained in Title II of the Older Americans Act (202(a)(21).

Catalog of Federal Domestic Assistance (CFDA) Number: 93.048, Discretionary Projects.

DATES:

- Application Submission deadline: August 21, 2014.
- The supplemental funds will be issued no later than September 30, 2014.

I. Program Description

The Administration on Aging, an agency of the U.S. Administration for Community Living, has been funding the Eldercare Locator (the Locator) since 1991. The Eldercare Locator links older persons and their caregivers to resources through a nationally recognized toll-free number, 1–800–677–1116 and Web site (www.eldercare.gov). Since inception, over 2.7 million older adults, caregivers, professionals and others have used the Locator toll-free number to find resources for older adults in any U.S. community. The goal is to provide users with the information and resources they need that will help older persons live independently and safely in their homes and communities for as long as possible.

The Eldercare Locator call center utilizes live agents to help callers find their way through the maze of services for older adults by linking to a trustworthy network of national, State, Tribal and community organizations and services. In 2011, an additional feature was added to assist older adults and caregivers who require more in depth support the opportunity to speak with highly trained eldercare consultants who can better triage the situation. In addition written materials are provided to further educate callers and users of the Web site on a variety of topics such as fall prevention, housing, and advanced care planning.

II. Justification for the Supplemental Funding

Since 2011, the demand for eldercare consultant services has increased dramatically, doubling in the last year. During the last 6 months, 40% of the calls escalated to eldercare consultants were individuals calling with multiple and very complex issues. Because of the complexity, eldercare consultant calls are about 5 minutes longer than a regular information specialist call which averages about 5 minutes. There is a need to increase the number of eldercare consultants to handle this higher demand for intense consultation. In addition, there is a need to increase the availability of resource materials available to supplement and educate the callers about complex eldercare issues.

III. Eligible Applicants: Current Grantee

Evaluation Criteria: ACL will use the following evaluation criteria to ensure that proposed activities are within the approved scope and budget of the grant:

Approach

Is the purpose of the funding clearly described? Does it reflect a coherent and feasible approach for successfully addressing the identified problem and achieving the identified outcome(s)? Is the project work plan clear and comprehensive? Does it include sensible and feasible timeframes for the accomplishment of tasks presented? Does the work plan include specific objectives and tasks that are linked to measurable outcomes?

Budget

Is the budget justified with respect to the adequacy and reasonableness of resources requested? Are budget line items clearly delineated and consistent with work plan objectives?

Project Impact

Are the expected project benefits/results clear, realistic, and consistent with the objectives and purpose of the project? In addition, information previously provided in semi-annual reports will be considered in evaluating the proposal.

IV. Application and Submission Requirements

A. SF 424—Application for Federal Assistance.
B. SF 424A—Budget Information.
C. Separate Budget Narrative/Justification.
D. SF 424B—Assurances. Note: Be sure to complete this form according to instructions and have it signed and dated by the authorized representative (see item 18d of the SF 424).
E. Lobbying Certification.
F. Program narrative—no more than 4-pages.
G. Work Plan.
H. Grantee will be required to access the application kit in *www.GrantSolutions.gov* to submit all materials for this application.

V. Application Review Information

Application will be reviewed by Federal staff.

VI. Agency Contact

For further information or comments regarding this program expansion supplement, contact Sherri Clark, U.S. Department of Health and Human Services, Administration for Community Living, Office of External Affairs, One Massachusetts Avenue NW., Washington, DC 20001; telephone (202) 357–3506; email *sherri.clark@acl.hhs.gov*.

Dated: July 22, 2014.

Kathy Greenlee,
Administrator and Assistant Secretary for Aging.

[FR Doc. 2014–17585 Filed 7–24–14; 8:45 am]
BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0086]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Potential Tobacco Product Violations Reporting Form

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Potential Tobacco Product Violations Reporting Form'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On May 14, 2014, the Agency submitted a proposed collection of information entitled ''Potential Tobacco Product Violations Reporting Form'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0716. The approval expires on July 31, 2017. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: July 18, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–17543 Filed 7–24–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–1601]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Annual Reporting for Custom Device Exemption

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Annual Reporting for Custom Device Exemption'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On May 14, 2014, the Agency submitted a proposed collection of information entitled ''Annual Reporting for Custom Device Exemption'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0767. The approval expires on July 31, 2017. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: July 21, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–17482 Filed 7–24–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0019]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Customer/Partner Service Surveys

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by August 25, 2014.

ADDRESSES: To ensure that comments on the 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: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0360. Also include the FDA 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, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Customer/Partner Service Surveys—(OMB Control Number 0910–0360)—Extension

Under section 903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393), FDA is authorized to conduct research and public information programs about regulated products and responsibilities of the Agency. Executive Order 12862, entitled, ''Setting Customer Service Standard,'' directs Federal Agencies that ''provide significant services directly to the public'' to ''survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.'' FDA is seeking OMB clearance to conduct a series of surveys to implement Executive Order 12862. Participation in the surveys is voluntary. This request covers customer/partner service surveys of regulated entities, such as food processors; cosmetic, drug, biologic, and medical device manufacturers; consumers; and health professionals. The request also covers ''partner'' (State and local governments) customer service surveys.

FDA will use the information from these surveys to identify strengths and weaknesses in service to customers/partners and to make improvements. The surveys will measure timeliness, appropriateness, and accuracy of information; courtesy; and problem resolution in the context of individual programs.

FDA estimates conducting 15 customer/partner service surveys per year, each requiring an average of 15 minutes for review and completion. We estimate respondents to these surveys to be between 100 and 20,000 customers. Some of these surveys will be repeats of earlier surveys for purposes of monitoring customer/partner service and developing long-term data.

In the **Federal Register** of April 17, 2014 (79 FR 21765), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Type of survey	Number of respondents	Annual frequency per response	Average burden per response	Total hours
Mail, telephone, Web-based	50,000	1	[2] 0.25	12,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Fifteen (15) minutes.

Dated: July 18, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–17590 Filed 7–24–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–N–0220]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for Industry—Pharmacogenomic Data Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Guidance for Industry—Pharmacogenomic Data Submissions'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On May 9, 2014, the Agency submitted a proposed collection of information entitled ''Guidance for Industry—Pharmacogenomic Data Submissions'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0557. The approval expires on July 31, 2017. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: July 21, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–17481 Filed 7–24–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1006]

Revised Draft Guidance for Industry on Providing Regulatory Submissions in Electronic Format—Certain Human Pharmaceutical Product Applications and Related Submissions Using the Electronic Common Technical Document Specifications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a revised draft guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Certain Human Pharmaceutical Product Applications and Related Submissions Using the eCTD Specifications.'' The draft guidance announced in this notice is being issued in accordance with the Food and Drug Administration Safety and Innovation Act (FDASIA), which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) to require that certain submissions under the FD&C Act and Public Health Service Act (PHS Act) be submitted in electronic format, beginning no earlier than 24 months after issuance of the final version of the guidance on that topic. The draft guidance outlines Electronic Common Technical Document (eCTD) specification requirements for certain submissions to new drug applications (NDAs), abbreviated new drug applications (ANDAs), biologics license applications (BLAs), and investigational new drug applications (INDs) and is being issued for public comment. This draft guidance revises and replaces a previous draft guidance entitled ''Providing Regulatory Submissions in Electronic Format—Certain Human Pharmaceutical Product Applications and Related Submissions Using the eCTD Specifications'' that was issued in January 2013 (2013 draft guidance on eCTD Specifications). When finalized, this revised draft guidance will supersede the guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Human Pharmaceutical Product Applications and Related Submissions Using the eCTD Specifications'' that was issued in June 2008.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by September 23, 2014.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002, or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Virginia Hussong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 1161, Silver Spring, MD 20993, email: *virginia.hussong@fda.hhs.gov;* or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New

Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Certain Human Pharmaceutical Product Applications and Related Submissions Using the eCTD Specifications.'' FDASIA (Public Law 112–144), signed by the President on July 9, 2012, amended the FD&C Act to add section 745A (21 U.S.C.379k–1) entitled ''Electronic Format for Submissions.'' Section 745A(a)(1) of the FD&C Act requires that submissions under section 505(b), (i), or (j) of the FD&C Act (21 U.S.C 355(b), (i), or (j)), and submissions under section 351(a) or (k) of the PHS Act (42 U.S.C. 262(a) or (k)), be submitted to FDA in electronic format no earlier than 24 months after FDA issues final guidance on that topic.

In accordance with section 745A(a)(1) of the FD&C Act, FDA is issuing this draft guidance, announcing its determination that submission types identified in this draft guidance must be submitted electronically (except for submissions that are exempted), in the format specified in this guidance.

This guidance (and the technical specification documents it incorporates by reference) describes how submissions under section 745A(a) of the FD&C Act [1] must be organized and submitted in electronic format using eCTD specifications version 3.2.2. The eCTD is an International Conference on Harmonization (ICH) format based on specifications developed by ICH and its member parties. FDA's Center for Drug Evaluation and Research (CDER) and Center for Biologics Evaluation and Research (CBER) have been receiving submissions in the eCTD format since 2003, and eCTD has been the recommended format for electronic submissions to CDER and CBER since January 1, 2008. The majority of new electronic submissions are now received in eCTD format.

This guidance revises and replaces the previous 2013 draft guidance on eCTD specifications. This revised version of the draft guidance, when finalized, will supersede the guidance for industry titled ''Providing Regulatory Submissions in Electronic Format—Human Pharmaceutical Product Applications and Related Submissions Using the eCTD Specifications'' that was issued in June 2008. This revised draft guidance, when finalized, will be applicable to all submissions within the scope of section 745A(a) of the FD&C Act, i.e., certain NDAs, ANDAs, BLAs, and INDs and all subsequent submissions, including amendments, supplements, and reports, to these submission types.[2]

In general, this revised draft guidance contains the following changes from the previous 2013 draft guidance on eCTD specifications:

- It is now explicit that certain master files are within the scope of section 745A(a) of the FD&C Act.
- Similarly, it is now explicit that advertising and promotional labeling materials are also within the scope of section 745A(a) of the FD&C Act.
- Use of the FDA Electronic Submissions Gateway (ESG) will be required.
- Use of FDA fillable forms will be required with all eCTD submissions.
- Specified file formats and software versions will be required for submissions filed with the FDA.

After publication of the **Federal Register** notice of availability of the final version of the guidance, all submissions with a filing date 24 months after the **Federal Register** notice must use the appropriate FDA-supported eCTD specifications for certain NDA, ANDA, and BLA submissions. IND submissions must use the FDA-supported eCTD specifications for electronic submissions filed 36 months after the **Federal Register** notice of availability is published.

In section 745A(a) of the FD&C Act, Congress granted explicit authorization to FDA to implement the statutory electronic submission requirements by specifying in a guidance document the format for the submissions. Accordingly, to the extent that this draft guidance provides the requirements under section 745A(a) of the FD&C Act, indicated by the use of the words *must* or *required,* it is not subject to the usual restrictions in FDA's good guidance practice regulations, such as the requirement that guidances not establish legally enforceable responsibilities (see 21 CFR 10.115(d)).

II. Paperwork Reduction Act of 1995

The draft guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The draft guidance pertains to sponsors and applicants making regulatory submissions to FDA in electronic format for NDAs, ANDAs, BLAs, INDs, master files, and advertising and promotional labeling. The information collection discussed in the draft guidance is contained in our IND regulations (21 CFR part 312) and approved under OMB control number 0910–0014, our NDA regulations (including ANDAs) (21 CFR part 314) and approved under OMB control number 0910–0001, and our BLA regulations (21 CFR part 601) and approved under OMB control number 0910–0338.

Sponsors and applicants have been submitting NDAs, ANDAs, BLAs, INDs, and master files electronically since 2003, and the majority of these submissions are already received in electronic format. Under section 745A(a) of the FD&C Act, sponsors and applicants are required to file most of these submissions electronically. These requirements will be phased in over 2- and 3-year periods after the issuance of the final version of the guidance.

For some sponsors and applicants, there may be new costs, including capital costs or operating and maintenance costs, which would result from the requirements under FDASIA and the final version of the guidance, because some sponsors and applicants may have to upgrade eCTD specifications and/or change their method of submitting information to the FDA. FDA estimates that for some sponsors and applicants the costs may be as follows:

- eCTD Publishing Software: $25,000 to $150,000;
- Publishing Operations Support: $50,000 to $1,000,000; and
- Training: $5,000 to $50,000.

III. Comments

Interested persons may submit either electronic comments to *http://www.regulations.gov* or written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://*

[1] For more information concerning how the FDA interprets section 745(a), see the draft guidance for industry ''Providing Regulatory Submissions in Electronic Format—Submissions Under Section 745A(a) of the Federal Food, Drug, and Cosmetic Act'' (available at *http://www.fda.gov/drugs/guidancecomplianceregulatoryinformation/guidances/default.htm).*

[2] See id.

www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, or *http://www.regulations.gov.*

Dated: July 22, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–17588 Filed 7–24–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0001]

Clinical Investigator Training Course

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration's (FDA's) Center for Drug Evaluation and Research/Office of Medical Policy and the Duke University Office of Continuing Medical Education are cosponsoring a 3-day training course for clinical investigators on scientific, ethical, and regulatory aspects of clinical trials. This training course is intended to provide clinical investigators with expertise in the design, conduct, and analysis of clinical trials; improve the quality of clinical trials; and enhance the safety of trial participants. Senior FDA staff will communicate directly with clinical investigators on issues of greatest importance for successful clinical research.

Date and Time: The training course will be held on November 4 and 5, 2014, from 8 a.m. to 5 p.m., and on November 6, 2014, from 8 a.m. to 3:30 p.m.

Location: The course will be held at the Holiday Inn College Park, 10000 Baltimore Ave., College Park, MD 20740.

Contact Person: Tomeka Arnett, Office of Medical Policy, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6355, Silver Spring, MD 20993, 301–796–8486.

Registration: Register by October 17, 2014. The registration fee is $150 per person. The fee includes course materials and onsite lunch. Early registration is recommended because seating is limited. There will be no onsite registration.

Register online for the training course at the registration Web site *http://continuingeducation.dcri.duke.edu/citc* or download a full-size copy of the registration form from the registration site and mail a check and completed form to Duke Clinical Research Institute (DCRI), Attention—Duke CME/CEE, 300 West Morgan St., Suite 800, Durham, NC 27701. You will receive an email that confirms your registration. (FDA has verified the Web site address, but FDA is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.)

Attendees are responsible for their own accommodations. A block of rooms has been reserved under ''FDA Clinical Investigator Course'' at the Holiday Inn College Park at a reduced conference rate. Reservations for these accommodations can be made online using the course registration Web site mentioned previously. Click on ''registration form.'' You will see a direct link to the hotel.

Registration materials, payment procedures, accommodation information, and a detailed description of the course can be found at the registration/information Web site mentioned previously.

If you need special accommodations due to a disability, please contact Tomeka Arnett (see *Contact Person*) at least 7 days in advance. Persons attending the course are advised that FDA is not responsible for providing access to electrical outlets.

SUPPLEMENTARY INFORMATION:

I. Background

Clinical trial investigators play a critical role in the development of medical products. They bear the responsibility for ensuring the safe and ethical treatment of study subjects and for acquiring adequate and reliable data to support regulatory decisions. This course is intended to assist clinical investigators in understanding what preclinical and clinical information is needed to support the investigational use of medical products, as well as the scientific, regulatory, and ethical considerations involved in the conduct of clinical trials. The course will cover a wide variety of key topics, including material on novel safety concerns, adverse event monitoring, compliance with the legal and ethical obligations of clinical research, and acceptable scientific and analytic standards in the design and conduct of clinical studies. The faculty will include a diverse representation of senior FDA staff, enabling FDA to communicate directly with clinical investigators on issues of greatest importance for successful clinical research.

II. Description of the Training Course

A. Purpose

The training course is designed to provide clinical investigators with an overview of the following information:

- The essential toxicological, pharmacological, and manufacturing data to support investigational use in humans;
- fundamental issues in the design and conduct of clinical trials;
- statistical and analytic considerations in the interpretation of trial data;
- appropriate safety evaluation during studies; and
- the ethical considerations and regulatory requirements for clinical trials.

In addition, the course should accomplish the following:

- Foster a cadre of clinical investigators with knowledge, experience, and commitment to investigational medicine;
- promote communication between clinical investigators and FDA;
- enhance investigators' understanding of FDA's role in experimental medicine; and
- improve the quality of data while enhancing subject protection in the performance of clinical trials.

B. Proposed Agenda

The course will be conducted over 3 days and comprises approximately 26 lectures, each lasting between 30 and 45 minutes. The course will be presented mainly by senior FDA staff, with guest lecturers presenting selected topics.

The course will address FDA's role in clinical studies and regulatory considerations for clinical trials and will include a review of the material generally appearing in an ''investigator's brochure,'' i.e., the preclinical information (toxicology, animal studies, and chemistry/manufacturing information) that supports initial clinical trials in humans. Presenters will discuss the role of clinical pharmacology in early clinical studies and how this information is used in the design of subsequent studies. The course will also include discussions of scientific, statistical, ethical, and regulatory aspects of clinical studies. On November 6, 2014, participants will choose among three breakout sessions that will explain how to put together an application to FDA for drugs, biologics, or devices.

C. Target Audience

The course is targeted toward health care professionals responsible for, or involved in, the conduct and/or design of clinical trials.

Dated: July 22, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–17589 Filed 7–24–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: SAMHSA SOAR Web-Based Data Form (OMB No. 0930–0329)—Revision.

In 2009 the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services created a Technical Assistance Center to assist in the implementation of the SSI/SSDI Outreach Access and Recovery (SOAR) effort in all states. SOAR's primary objective is to improve the allowance rate for Social Security Administration (SSA) disability benefits for people who are homeless or at risk of homelessness, and who have serious mental illnesses.

During the SOAR training, the importance of keeping track of SSI/SSDI applications through the process is stressed. In response to requests from states implementing SOAR, the Technical Assistance Center under SAMHSA's direction developed a web-based data form that case managers can use to track the progress of submitted applications, including decisions received from SSA either on initial application or on appeal. This password-protected web-based data form is housed on the SOAR Web site (*https://soartrack.prainc.com*). Use of this form is completely voluntary.

In addition, data from the web-based form can be compiled into reports on decision results and the use of SOAR core components, such as the SSA–1696 Appointment of Representative, which allows SSA to communicate directly with the case manager assisting with the application. These reports will be reviewed by agency directors, SOAR state-level leads, and the national SOAR Technical Assistance Center and SOAR national evaluation team to quantify the success of the effort overall and to identify areas where additional technical assistance is needed. The changes to this form are an added question about the reason for denial, if received and an added ten optional questions about Medicaid and Medicare reimbursement amounts, back payments and applicants' work involvement and earnings. These data provide important tools in local and state sustainability efforts of SOAR. If caseworkers do not have this information, they can simply leave the items blank.

The estimated response burden is as follows:

Information source	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hours
SOAR Data Form	700	3	2100	.25	525

Written comments and recommendations concerning the proposed information collection should be sent by August 25, 2014 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2014–17521 Filed 7–24–14; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5753–N–03]

60-Day Notice of Proposed Information Collection: Housing Opportunities for Persons With AIDS (HOPWA) Program: Annual Grantee Performance Reporting Requirements and Competitive/Renewal Grant Project Budget Summary

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date: September 23, 2014.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400, for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Eric Pfeifer, Management Analyst, CPD, Office of HIV/AIDS Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 7212, Washington, DC 20410–5000; telephone 202–708–1934 (this is not a toll-free number) or email at *eric.m.pfeifer@hud.gov.* This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–

8339. Copies of available documents submitted to OMB may be obtained from Mr. Pfeifer.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Annual Grantee Performance Reporting Requirements and Competitive/Renewal Grant Project Budget Summary forms.

OMB Approval Number: 2506–0133.

Type of Request: Extension of currently approved collection, without change.

Form Number: HUD–40110–B, HUD–40110–C; and HUD–40110–D.

Description of the Need for the Information and Proposed Use: The HOPWA Competitive Application and Renewal of Permanent Supportive Housing Project Budget Summary, HUD–40110–B, is a grant applicant submission requirement for new competitive grant applications solicited through a Notice of Funding Availability (NOFA) and for all annual expiring renewal grant reviews. The budget form enables an evaluation of competitive grant applications to determine if the proposed project activity is feasible within the context of the overall program design inclusive of proposed planned and actual accomplishments. The Annual Progress Report (APR), HUD–40110–C, for competitive grantees, and the Consolidated Annual Performance and Evaluation Report (CAPER), HUD–40110–D, for formula grantees, are critical reporting requirements necessary to aggregate individual and national performance data, both program output data and program beneficiary outcomes to inform HUD's strategic management plan goals including requested reports to Congress. The data collection informs local communities on the use of these federal resources and in planning and coordination with other leveraged and available resources.

Respondents: HOPWA program formula and competitive grant recipients and competitive/renewal grant applicants.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD–40110–B	35	annual	1	12	420	40	$16,800
HUD–40110–C	92	annual	1	56	5,152	40	206,080
HUD–40110–D	126	annual	1	42	5,292	40	211,680
Total	253	annual	1		10,864		434,560

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: July 17, 2014.

Clifford Taffet,

Assistant Secretary for Community Planning and Development (Acting).

[FR Doc. 2014–17562 Filed 7–24–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–60]

30-Day Notice of Proposed Information Collection: Phase One Letters of Interest for the Homeowners Armed With Knowledge (HAWK) for New Homebuyers Pilot Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* August 25, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on May 16, 2014.

A. Overview of Information Collection

Title of Information Collection: Phase One Letters of Interest for the Homeowners Armed With Knowledge (HAWK) Pilot for New Homebuyers.

OMB Approval Number: 2502-New.

Type of Request: New collection.

Form Number: None.

Description of the need for the information and proposed use: The HAWK for New Homebuyers pilot (HAWK Pilot), announced in a separate **Federal Register** notice (79 FR 27896), will provide FHA insurance pricing incentives to first-time homebuyers who participate in a course of housing counseling and education. The notice

also announced the process and criteria for selecting FHA-approved lenders and servicers and HUD-approved housing counseling agencies to participate in Phase One of the HAWK Pilot. Pending this approval, HUD requested that interested parties that meet the selection criteria notify HUD of their interest to participate in the pilot program. Parties must send their letters of interest to Attention: Deputy Assistant Secretary of the Office of Housing Counseling, 451 7th Street SW., Washington, DC 20410, or send electronically to *housing.counseling@hud.gov* with the subject line reading ''HAWK Pilot Phase One'' to be considered for participation in Phase One.

The information collected from interested FHA-approved lenders and servicers and HUD-approved housing counseling agencies will be used to select participants for Phase One of the HAWK for New Homebuyers pilot.

Respondents (i.e. affected public): HUD-approved housing counseling agencies and FHA- approved lenders.

Estimated Number of Responses: 40.

Frequency of Response: 40.

Average Hours per Response: Once.

Total Estimated Burdens: 20 hours.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Lenders and Servicers	20	once	20	1	20	$29	$580
Housing Counseling Agencies.	20	once	20	1	20	29	580
Totals	40		40		40		1,160

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: July 17, 2014.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–17459 Filed 7–24–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5804–N–01]

60-Day Notice of Proposed Information Collection: HUD Stakeholder Survey

AGENCY: Office of Public Affairs, Office of Public Engagement, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* September 23, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at Colette.Pollard@hud.gov for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: HUD Stakeholder Survey.

OMB Approval Number: 2501–0027.

Type of Request: Extension of currently approved collection.

Description of the need for the information and proposed use: The Department of Housing and Urban Development (HUD) hosts events with a variety of groups nationwide designed to educate stakeholders about HUD initiatives and policies. This data collection consists of a brief, optional survey to be completed in person at the end of each event. The information produced by the stakeholder surveys will allow HUD to measure the effectiveness of the stakeholder sessions and collect feedback on policy initiatives. The information can be used to shape policies, improve stakeholder events and make better use of HUD's limited time with stakeholders. There are no similar surveys which allow for HUD to engage in a sustained, systematic collection of feedback from stakeholders on a broad range of HUD initiatives and events.

Respondents (i.e. affected public): HUD stakeholder groups that include (but are not limited to) public housing authorities, congressional members and staff, local government officials, assisted housing residents, HUD grantees, civil rights organizations, homeless advocacy organizations, the legal community, academics, organized labor representatives, HUD grantees, and members of the housing, nonprofit,

philanthropic, business and faith-based sectors.

Estimated Number of Respondents: 3150.

Estimated Number of Responses: 3150.

Frequency of Response: 1.

Average Hours per Response: .1.

Total Estimated Burdens: 315 hrs.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
.....	3150	1	3150	.1	315	$1.44	$4536
Total							

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: July 21, 2014.

Francey Youngberg,

Deputy Assistant Secretary for Public Engagement, Office of Public Affairs.

[FR Doc. 2014–17565 Filed 7–24–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5753–N–04]

60-Day Notice of Proposed Information Collection:

Planning Phase Evaluation of the LGBTQ Youth Homelessness Prevention Initiative

AGENCY: Office of Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described here. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* September 23, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Matthew Aronson, Program Specialist, SNAPS/CPD, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Matthew Aronson at *Matthew.K.Aronson @hud.gov* or telephone 202–402–3554. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Mr. Aronson.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Planning Phase Evaluation of the LGBTQ Youth Homelessness Prevention Initiative.

OMB Approval Number: N/A.

Type of Request: New.

Form Number: N/A.

Description of the need for the information and proposed use: The LGBTQ Youth Homelessness Prevention Initiative began in the summer of 2013 as part of a federal interagency initiative. The initiative's goal is to prevent homelessness among lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth, and to intervene early when homelessness occurs for these youth. Federal partners from the U.S. Departments of Education, Health, and Juvenile Justice, as well as the U.S. Interagency Council on Homelessness, support this HUD initiative. The initiative supports the federal goal to end youth homelessness by 2020 and contributes to the development of a model for preventing LGBT youth homelessness that other communities can replicate. There are two communities participating in this initiative and both receive technical assistance (TA) to support their initiative planning (and later in the process, their initiative implementation).

At this time, both communities are in the midst of their strategic planning and we do not currently have information on the strategies they plan to implement starting in fall 2014. Hence, this request for OMB clearance only covers the first evaluation phase. This planning phase evaluation will document how the two participating communities have approached their local plan development. Furthermore, it will examine the resources required to carry out the planning process, what worked well, what challenges emerged and how they were addressed, and lessons learned. To produce this information, HUD will collect quantitative and qualitative data from primary sources using four methods: Interviews, surveys, focus groups, and document review. Participants will consist of the local initiative leads as well as individuals involved in local initiative steering committees and subcommittees. Documents to be reviewed will not require new data collection—they are

available through the ongoing TA to the two communities.

This first evaluation phase will focus on nine aspects of the planning process: (1) Role of local leads, (2) timeline; (3) needs assessment, (4) logic model; (5) local plan development; (6) role of steering committee; (7) role of subcommittees; (8) community involvement; and (9) technical assistance supports. These areas were chosen to better understand development of the local plans, including learned lessons, overall strengths/assets, and weaknesses/challenges of the planning phase. A separate OMB clearance request will be submitted as part of the second evaluation phase, which will examine each community's implementation of their local plans.

Respondents (i.e. affected public): Organizations participating in the two local initiatives, including local lead organizations and participants on the local steering committees and subcommittees.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Planning Phase Interview: Local leads, steering committee members, and sub-committee members (n = 96)	13	1	1	1	13	$25.46	$331
Planning Phase Focus Group: Local leads, steering committee members, and subcommittee members (n = 96)	24	1	1	1	24	25.46	611
Planning Phase Survey: Local leads, steering committee members, and sub-committee members (n = 96)	110	1	1	.25	27.5	25.46	700
Total	110	1	1	.25—1	64.5	25.46	1,642

* $25.46 is a GS–11 equivalent hourly cost. Hourly cost per response will vary at participating nonprofit and local government offices.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: July 17, 2014.

Clifford Taffet,

Assistant Secretary for Community Planning and Development, (Acting).

[FR Doc. 2014–17561 Filed 7–24–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5753–N–02]

60-Day Notice of Proposed Information Collection: Closeout Instructions for Community Development Block Grant (CDBG) Programs Grants

AGENCY: Office of the Assistant Secretary for Community Planning and Development.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* September 23, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Hunter Kurtz, Community Planning and Development Specialist, CPD, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Hunter.Kurtz@hud.gov* or telephone 202–402–7466. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Mr. Kurtz.

SUPPLEMENTARY INFORMATION: This notice *informs* the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Closeout Instructions for Community Development Block Grant (CDBG) Program Grants.

OMB Approval Number: 2506–0193.

Type of Request: Extension of currently approved collection.

Form Number: Notice CPD–14–02 Includes HUD Forms: 40151, 40152, 40153, 40154, 40155, 40156, 40157, 40158, 40159, 40161, 40164, 40175, 40176, 40177, 40178, 40179, 40180, 40181, 40182, 40183, and 40184.

Description of the need for the information and proposed use: This information collection is being conducted by CPD Office of Block Grant

Assistance to assist the Administrator of HUD in determining, as required by Section 104 (e) of the (HCDA) of 1974, and outlined in Subpart I (for States) and Subpart J (for entitlements) of the CDBG regulation, whether Grantees, have carried out eligible activities and its certifications in accordance with the statutory and regulatory requirements governing State CDBG, CDBG–R, Disaster Recovery, NSP1, NSP2 and NSP3 grants prior to closing the grant allocation.

Respondents: Entitlement communities, Nonprofits, States and units of general local governments.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Total	3,088	Once during the grant	204.5	17	738.5	$24.10	$17,797.85

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: July 17, 2014.

Clifford Taffet,

Assistant Secretary for Community Planning and Development (Acting).

[FR Doc. 2014–17564 Filed 7–24–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5750–N–30]

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 use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, 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 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301)–443–2265 (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040, Washington, DC 20405, (202) 501–0084; (This is not a toll-free number).

Dated: July 17, 2014.

Brian P. Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM, FEDERAL REGISTER REPORT FOR 07/25/2014

Suitable/Available Properties

Building

Wisconsin

St. Croix National Scenic
Riverway Residential Structures
401 N. Hamilton St.
St. Croix Falls, WI 54204
Landholding Agency: GSA
Property Number: 54201430001
Status: Excess
GSA Number: 1–I–WI–541B
Directions: Landholding Agency: Interior; Disposal Agency: GSA
Comments: House #1: 1,048 sq. ft.; House #2: 2,376 sq. ft.; House #3: 2,936 sq. ft.; good to fair conditions; LBP; contact GSA for more information.

[FR Doc. 2014–17233 Filed 7–24–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FW–HQ–WSFR–2014–N162; FVWF58520900000]

Proposed Information Collection; Coastal Impact Assistance Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service, FWS) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on September 30, 2014. We 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: To ensure that we are able to consider your comments on this IC, we must receive them by September 23, 2014.

ADDRESSES: Send your comments on the IC to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service Headquarters, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or *hope_grey@fws.gov* (email). Please include ''1018–0147'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey at *hope_grey@fws.gov* (email) or 703–358–2482 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 384 of the Energy Policy Act of 2005 (Pub. L. 109–58) established the Coastal Impact Assistance Program (CIAP). This program provides Federal grant funds derived from Federal offshore lease revenues to oil-producing States for:

- Conservation, protection, or restoration of coastal areas, including wetlands;
- Mitigation of damage to fish, wildlife, or natural resources;
- Planning assistance and the administrative costs of complying with these objectives;
- Implementation of a federally approved marine, coastal, or comprehensive conservation management plan; and
- Mitigation of the impact of Outer Continental Shelf activities through funding of onshore infrastructure projects and public service needs.

The States of Alabama, Alaska, California, Louisiana, Mississippi, and Texas are eligible for CIAP funding. Also eligible to receive CIAP funds are 67 coastal political subdivisions (CPS) in the 6 States. The affected States have prepared Statewide CIAP plans that include proposed projects. The federally approved CIAP plans have also been coordinated through a public review process.

Once a project is approved, we must monitor the project to determine that the CIAP funds are being used for appropriate expenses. The monitoring will be achieved through the grant regulations that require grantees to provide, at a minimum, an annual progress report and a financial status report.

II. Data

OMB Control Number: 1018–0147.

Title: Coastal Impact Assistance Program.

Service Form Number: None.

Type of Request: Revision of a currently approved collection.

Number of Respondents: 73.

Description of Respondents: 6 States (Alabama, Alaska, California, Louisiana, Mississippi, and Texas) and 67 coastal political subdivisions in these States.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for amendments/changes to a project and other requests; annually for reports; and ongoing for recordkeeping.

Activity	Number of responses	Completion time per response (hours)	Total annual burden hours
Submit annual reports	479	8	3,832
Notify FWS in case of delays, adverse conditions, etc., that impair ability to meet objectives of an award	60	8	480
Request termination and supporting information	45	6	270
Maintain records	756	0.5	378
Telephone followup discussion on financial capabilities	100	8	800
Develop language and individual signage at CIAP Sites	100	8	800
Submission of photographs/CDs of projects for tracking purpose	250	4	1,000
Request changes and/or amendments to a project	192	42	8,064
Totals	1,982		15,624

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. 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: July 22, 2014.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2014–17628 Filed 7–24–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2014–N120; FXES11130200000–145–FF02ENEH00]

Oil and Gas Industry Conservation Plan for the American Burying Beetle in Oklahoma; Finding of No Significant Impact for Environmental Assessment; Receipt of an Incidental Take Permit Application for Participation From Canyon Creek Energy Operating

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, make available the final Environmental Assessment (EA), Finding of No Significant Impact (FONSI), Response to Comments, and the final *Oil and Gas Industry Conservation Plan Associated With Issuance of Endangered Species Act Section 10(a)(1)(B) Permits for the American Burying Beetle in Oklahoma* (ICP). We also invite the public to comment on an application from Canyon Creek Energy Operating, for incidental take of the federally listed American burying beetle resulting from activities associated with the construction, operation, maintenance, repair, and decommissioning of oil and gas pipelines and related well field activities in Oklahoma, under the ICP. The final ICP, final EA, FONSI, and Response to Comments are available for review; however, we are not accepting comments on these final, approved documents. We are only accepting comments on the applicant's incidental take application.

DATES: To ensure consideration, written comments on the application from Canyon Creek Energy Operating, for incidental take of the federally listed American burying beetle must be received on or before August 25, 2014.

ADDRESSES: You may obtain copies of all documents and submit comments on the applicant's application by one of the following methods. Please refer to the permit number (TE–38404B) when requesting documents or submitting comments.

○ *U.S. Mail:* U.S. Fish and Wildlife Service, Division of Endangered Species—HCP Permits, P.O. Box 1306, Room 6034, Albuquerque, NM 87103.

○ *Electronically: fw2_hcp_permits@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Marty Tuegel, Branch Chief, by U.S. mail at Environmental Review, P.O. Box 1306, Room 6034, Albuquerque, NM 87103; or by telephone at 505–248–6651.

SUPPLEMENTARY INFORMATION:

Final Environmental Assessment, Finding of No Significant Impact, Response to Comments, and Oil and Gas Industry Conservation Plan

We, the U.S. Fish and Wildlife Service, make available the final Environmental Assessment (EA), Finding of No Significant Impact (FONSI), Response to Comments, and the final *Oil and Gas Industry Conservation Plan Associated With Issuance of Endangered Species Act Section 10(a)(1)(B) Permits for the American Burying Beetle in Oklahoma* (ICP). Drafts of the EA and ICP were made available for comment on April 16, 2014 (79 FR 21480), and were approved on May 21, 2014.

Under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), this notice advises the public that we, the Service, have analyzed the impacts to the human environment related to the issuance of incidental take permits (ITPs) under ESA section 10(a)(1)(B) to oil and gas companies (applicants) who agree to the conditions in the ICP. The ICP is a habitat conservation plan (HCP) that will address take of the ABB that is incidental to covered activities associated with oil and gas development, including geophysical exploration (seismic) and the construction, operation, maintenance, repair, and decommissioning of oil and gas pipelines and well field infrastructure. The ICP includes measures necessary to minimize and mitigate impacts to the covered species and their habitats to the maximum extent practicable. Any ITPs issued under the ICP will be in effect from the date of issuance for a period of up to 24 months for construction, and up to 20 years of operation, maintenance, repairs, and decommissioning, pursuant to the ICP. The ICP Planning Area covers 45 Oklahoma counties: Adair, Atoka, Bryan, Carter, Cherokee, Choctaw, Cleveland, Coal, Craig, Creek, Delaware, Garvin, Haskell, Hughes, Johnson, Kay, Latimer, Le Flore, Lincoln, Love, Marshall, Mayes, McClain, McCurtain, McIntosh, Murray, Muskogee, Noble, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Rogers, Seminole, Sequoyah, Tulsa, Wagoner, and Washington.

Activities associated with the construction, operation, maintenance, repair, and decommissioning of oil and gas pipelines and related well field activities as described in the ICP were developed through a collaborative effort between the Service, oil and gas companies in Oklahoma, and other stakeholders. To meet the requirements of a section 10(a)(1)(B) ITP, the applicant agrees to the conditions in the ICP, which describes the conservation measures to minimize and mitigate for incidental take of the covered species to the maximum extent practicable.

Application Available for Review and Comment

We, the U.S. Fish and Wildlife Service, invite local, State, Tribal, and Federal agencies, and the public to comment on the application from Canyon Creek Energy Operating, for incidental take under the ICP of the federally listed American burying beetle (*Nicrophorus americanus;* ABB) resulting from activities associated with geophysical exploration (seismic), development, extraction, or transport of crude oil, natural gas, and/or other petroleum products, and construction,

maintenance, operation, repair, and decommissioning of oil and gas pipelines and well field infrastructure within 45 counties in Oklahoma. Please refer to permit number TE–38404B when requesting application documents and when submitting comments.

Documents and other information the applicants have submitted with this application are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit TE–38404B

Applicant: Canyon Creek Energy Operating, Tulsa, OK. Applicant requests a new permit for oil and gas upstream and midstream production, including geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning of oil and gas well field infrastructure, as well as construction, maintenance, operation, repair, decommissioning, and reclamation of oil and gas gathering, transmission, and distribution pipeline infrastructure within Oklahoma.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Dated: July 9, 2014.

Joy E. Nicholopoulos,

Acting Regional Director, Southwest Region.

[FR Doc. 2014–17551 Filed 7–24–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX14LR000F60100]

Agency Information Collection Activities: Request for Comments

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension and revision of a currently approved information collection (1028–0068).

SUMMARY: We (the U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. This collection consists of 15 forms. As part of the requested extension, we will make several revisions to the number and nature of the associated collection instruments. These revisions include: (1) Deleting USGS Form 9–4092–A and USGS Form 9–4106–M; (2) changing USGS Form 9–4047–A from monthly and annual to an annual-only reporting form; (3) modifying USGS Form 9–4044–A and USGS Form 9–4045–M; and (4) modifying the title of USGS Form 9–4076–A. As required by the Paperwork Reduction Act (PRA) of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This collection is scheduled to expire on July 31, 2014.

DATES: To ensure that your comments are considered, OMB must receive them on or before August 25, 2014.

ADDRESSES: Please submit your written comments on this information collection directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, at *OIRA_SUBMISSION@omb.eop.gov* (email); or (202) 395–5806 (fax). Please also forward a copy of your comments to the Information Collection Clearance Officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192 (mail); 703–648–7195 (fax); or *gs-info_collections@usgs.gov* (email). Reference ''Information Collection 1028–0068, Ferrous Metals Surveys'' in all correspondence.

FOR FURTHER INFORMATION CONTACT: Elizabeth S. Sangine at 703–648–7720 (telephone); *escottsangine@usgs.gov* (email); or by mail at U.S. Geological Survey, 988 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192. You may also find information about this Information Collection Request (ICR) at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Respondents to these forms supply the USGS with domestic consumption data for 13 ores, concentrates, metals, and ferroalloys, some of which are considered strategic and critical. These data and derived information will be published as chapters in Minerals Yearbooks, monthly Mineral Industry Surveys, annual Mineral Commodity Summaries, and special publications, for use by Government agencies, industry education programs, and the general public.

II. Data

OMB Control Number: 1028–0068.

Form Number: Various (15 forms).

Title: Ferrous Metals Surveys.

Type of Request: Revision of a currently approved collection.

Affected Public: Business or other-for-profit institutions: U.S. nonfuel minerals consumers of ferrous and related metals.

Respondent Obligation: None. Participation is voluntary.

Frequency of Collection: Monthly and Annually.

Estimated Number of Annual Responses: 2,667.

Annual Burden Hours: 1,319 hours, based on an estimated average of 10 minutes to 1 hour per response.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: There are no ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number and current expiration date.

III. Request for Comments

On April 9, 2014, a 60-day **Federal Register** notice (79 FR 19639) was published announcing this information collection. Public comments were solicited for 60 days ending June 9, 2014. We received one public comment in response to that notice from the Department of Commerce Bureau of Economic Analysis (BEA) supporting the continued collection of these data which are an important data source for key components of BEA's economic statistics. We again invite comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b)

the accuracy of the agency's estimate of the burden time to the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your personal mailing address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment, including your personally identifiable information, may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public view, we cannot guarantee that it will be done.

Michael J. Magyar,

Associate Director, National Minerals Information Center, U.S. Geological Survey.

[FR Doc. 2014–17519 Filed 7–24–14; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[DR.5B814.IA001213]

Renewal of Agency Information Collection for Native American Business Development Institute (NABDI) Funding Solicitations and Reporting

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Assistant Secretary—Indian Affairs is submitting to the Office of Management and Budget (OMB) a request for renewal for the collection of information for the Native American Business Development Institute (NABDI) Funding Solicitation and Reporting. The information collection is currently authorized by OMB Control Number 1076–0178, which expires July 31, 2014.

DATES: Interested persons are invited to submit comments on or before August 25, 2014.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806 or you may send an email to: *OIRA_Submission@omb.eop.gov.* Please send a copy of your comments to Jack Stevens, Division Chief, Office of Indian Energy and Economic Development, Assistant Secretary—Indian Affairs, 1951 Constitution Avenue NW., MS–20 SIB, Washington, DC 20240; facsimile: (202) 208–4564; email: *Jack.Stevens@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Jack Stevens, (202) 208–6764.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Division of Economic Development (DED), within the Office of Indian Energy and Economic Development (IEED), established the Native American Business Development Institute (NABDI) to provide technical assistance funding to federally recognized American Indian tribes seeking to retain universities and colleges, private consulting firms, non-academic/non-profit entities, or others to prepare studies of economic development opportunities or plans. These studies and plans will empower American Indian tribes and tribal businesses to make informed decisions regarding their economic futures. Studies may concern the viability of an economic development project or business or the practicality of a technology a tribe may choose to pursue. The DED will specifically exclude from consideration proposals for research and development projects, requests for funding of salaries for tribal government personnel, funding to pay legal fees, and requests for funding for the purchase or lease of structures, machinery, hardware or other capital items. Plans may encompass future periods of five years or more and include one or more economic development factors including but not limited to land and retail use, industrial development, tourism, energy, resource development and transportation.

This is an annual program whose primary objective is to create jobs and foster economic activity within tribal communities. The DED will administer the program within IEED; and studies and plans as described herein will be sole discretionary projects DED will consider or fund absent a competitive bidding process. When funding is available, DED will solicit proposals for studies and plans. To receive these funds, tribes may use the contracting mechanism established by Public Law 93–638, the Indian Self-Determination Act or may obtain adjustments to their funding from the Office of Self-Governance. See 25 U.S.C. 450 *et seq.*

Interested applicants must submit a tribal resolution requesting funding, a statement of work describing the project for which the study is requested or the scope of the plan envisioned, the identity of the academic institution or other entity the applicant wishes to retain (if known) and a budget indicating the funding amount requested and how it will be spent. The DED expressly retains the authority to reduce or otherwise modify proposed budgets and funding amounts.

Applications for funding will be juried and evaluated on the basis of a proposed project's potential to generate jobs and economic activity on the reservation.

II. Request for Comments

The IEED requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. 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.

III. Data

OMB Control Number: 1076–0178.

Title: Native American Business Development Institute (NABDI) Funding Solicitations and Reporting.

Brief Description of Collection: Indian tribes that would like to apply for NABDI funding must submit an application that includes certain information. A complete application must contain:

• A duly-enacted, signed resolution of the governing body of the tribe;

• A proposal describing the planned activities and deliverables products; and

• The identity (if known) of the academic institution, private consultant, non-profit/non-academic entity, or other entity the tribe has chosen to perform the study or prepare the plan; and

• A detailed budget estimate, including contracted personnel costs, travel estimates, data collection and analysis costs, and other expenses, through DED reserves authority to reduce or otherwise modify this budget.

The DED requires this information to ensure that it provides funding only to those projects that meet the economic development and job creation goals for which NABDI was established. Applications will be evaluated on the basis of the proposed project's potential to generate jobs and economic activity on the reservation. Upon completion of the funded project, a tribe must then submit a final report summarizing events, accomplishments, problems and/or results in executing the project. A response is required to obtain a benefit.

Type of Review: Extension without change of currently approved collection.

Respondents: Indian tribes with trust or restricted land.

Number of Respondents: 20 applicants per year; 20 project participants each year, on average.

Frequency of Response: Once per year for applications and final report.

Estimated Time per Response: 40 hours per application; 1.5 hours per report.

Estimated Total Annual Hour Burden: 830 hours (800 for applications and 30 for final reports).

Estimated Total Annual Non-Hour Dollar Cost: $0.

Dated: July 21, 2014.

Phillip Brinkley,

Assistant Director for Information Resources.

[FR Doc. 2014–17584 Filed 7–24–14; 8:45 am]

BILLING CODE 4310–G1–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO2600000 L10600000 XQ0000]

Notice of Wild Horse and Burro Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The Advisory Board will meet on Monday, August 25, 2014, from 8:00 a.m. to 5:30 p.m. Mountain Time. This will be a 1-day meeting.

ADDRESSES: This Advisory Board meeting will take place in the Little Theater (SC 109), located in the Student Center Building of Central Wyoming College, 2660 Peck Avenue, Riverton, WY 82501, telephone 1–800–735–8418.

Written comments pertaining to the August 25, 2014, Advisory Board meeting can be mailed to National Wild Horse and Burro Program, WO–260, Attention: Ramona DeLorme, 1340 Financial Boulevard, Reno, NV 89502–7147, or sent electronically to *wildhorse@blm.gov*. Please include ''Advisory Board Comment'' in the subject line of the email.

FOR FURTHER INFORMATION CONTACT: Ramona DeLorme, Wild Horse and Burro Administrative Assistant, at telephone 775–861–6583. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the BLM Director, the Secretary of Agriculture, and the Chief of the Forest Service on matters pertaining to the management and protection of wild, free-roaming horses and burros on the Nation's public lands. The Wild Horse and Burro Advisory Board operates under the authority of 43 CFR part 1784. The tentative agenda for the meeting is:

I. Advisory Board Public Meeting

Monday, August 25, 2014 (8:00 a.m.–5:30 p.m.)

8:00 a.m. Welcome, Introductions, and Agenda Review
8:40 a.m. Approval of April 2014 Minutes
9:00 a.m. BLM Response to Advisory Board Recommendations
9:20 a.m. Wild Horse and Burro Program Update
12:00 p.m. Lunch
1:00 p.m. Public Comment Period Begins
2:30 p.m. Public Comment Period Ends
3:00 p.m. Working Group Reports
3:45 p.m. Advisory Board Discussion and Recommendations to the BLM
5:30 p.m. Adjourn

The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as an interpreting service, assistive listening device, or materials in an alternate format, must notify Ms. DeLorme 2 weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal Advisory Committee Management Regulations at 41 CFR 101–6.1015(b), requires the BLM to publish in the **Federal Register** notice of a public meeting 15 days prior to the meeting date.

II. Public Comment Procedures

On Monday, August 25, 2014, at 1:00 p.m., members of the public will have the opportunity to make comments to the Board on the Wild Horse and Burro Program. Persons wishing to make comments during the Monday meeting should register in person with the BLM by 12:00 p.m. on August 25, 2014, at the meeting location. Depending on the number of commenters, the Advisory Board may limit the length of comments. At previous meetings, comments have been limited to 3 minutes in length; however, this time may vary. Commenters should address the specific wild horse and burro-related topics listed on the agenda. Speakers are requested to submit a written copy of their statement to the address listed in the **ADDRESSES** section above or bring a written copy to the meeting. There may be a Webcam present during the entire meeting and individual comments may be recorded.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments. The BLM considers comments that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations to be the most useful and likely to influence the BLM's decisions on the management and protection of wild horses and burros.

Before including your address, phone number, email address, or other

personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 CFR 1784.4–1)

Gregory Shoop,

Deputy Assistant Director, Resources and Planning.

[FR Doc. 2014–17378 Filed 7–24–14; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR03250000, XXXR4079V4, RX.12256210.2029600]

Notice To Reopen the Public Scoping Comment Period and Notice of One Additional Public Scoping Meeting for the Navajo Generating Station-Kayenta Mine Complex Project, Arizona

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation is reopening the public scoping comment period for the Navajo Generating Station-Kayenta Mine Complex Project environmental impact statement from July 7, 2014 through August 31, 2014. We are also announcing that one additional scoping meeting will be held in Hotevilla, Arizona, on August 14, 2014.

DATES: Submit written comments on the scope of the environmental impact statement on or before August 31, 2014.

The additional public scoping meeting will be held on August 14, 2014, 9 a.m. to 12 p.m., and again from 4 p.m. to 7 p.m. (Pacific Daylight Time), Hotevilla, Arizona.

ADDRESSES: Send written comments on the scope of the environmental impact statement to the Phoenix Area Office, Bureau of Reclamation (ATTN: NGSKMC–EIS), 6150 W. Thunderbird Road, Glendale, AZ 85306–4001; via facsimile to (623) 773–6486; or email to *NGSKMC-EIS@usbr.gov*.

The additional public scoping meeting will be held at the Hotevilla Youth and Elderly Center, 1 Main Street, Hotevilla, AZ 86030.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Eto, (623) 773–6254; or by email at *NGSKMC–EIS@usbr.gov*. Additional information is available online at *http://www.ngskmc-eis.net*.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation published a notice of intent in the **Federal Register** on May 16, 2014 (79 FR 28546). The public comment period ended on July 7, 2014. We will hold one additional scoping meeting in Hotevilla, Arizona, to provide an overview of the project and allow public comment and discussion. The public scoping meeting will be held in an open house format; no formal presentation will be made. Navajo and Hopi interpreters will be present.

Special Assistance for Public Scoping Meeting

If special assistance is required at the scoping meeting, please contact Ms. Sandra Eto at (623) 773–6254; or email your assistance needs to *NGSKMC-EIS@usbr.gov*, along with your name and telephone number. Please indicate your needs at least 2 weeks in advance of the meeting to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified.

Public Disclosure

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: July 22, 2014.

Robert Quint,

Acting Deputy Commissioner Operations.

[FR Doc. 2014–17594 Filed 7–24–14; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–859]

Certain Integrated Circuit Chips and Products Containing the Same; Commission's Determination To Affirm in Part, Reverse in Part and Vacate in Part the Final Initial Determination Finding No Violation; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm in part, reverse in part, and vacate in part the final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on March 21, 2014, finding no violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337. The Commission finds no violation of section 337 and terminates the investigation.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 23, 2012, based on a complaint filed by Realtek Semiconductor Corporation (''Realtek'') of Hsinchu, Taiwan alleging violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), as amended, by reason of infringement of certain claims of U.S. Patent Nos. 6,787,928 (''the '928 patent'') and 6,963,226 (''the '226 patent''). 77 *FR* 64826. The notice of investigation named as respondents LSI Corporation of Milpitas, California; and Seagate Technology of Cupertino, California (collectively ''Respondents''). The '226 patent was terminated from the investigation.

On March 21, 2014, the ALJ issued her final ID finding no violation of section 337. The ALJ held that no violation occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain integrated circuit chips and products containing the same that infringe one or more of claims 1–10 of the '928 patent. Although the ALJ found that the asserted claims were infringed, the ALJ held claims 1–10 of the '928

patent invalid and found that no domestic industry exists.

On April 4, 2014, Realtek filed a petition for review, and on April 7, 2014, Respondents filed a contingent petition for review. The parties timely responded to each other's petitions for review.

On May 22, 2014, the Commission determined to review the ID in part. The Commission sought briefing on seventeen questions and on the issues of remedy, public interest and bonding. On June 5, 2014, the parties filed their initial briefs on review and on June 16, 2014, the parties filed their responsive briefs.

Having considered the record and the parties' submissions, the Commission finds that no violation of section 337 has occurred. Specifically, the Commission affirms in part, reverses in part, and vacates in part to find that (1) all of the accused products infringe claims 1–3, and 6–10 of the '928 patent; (2) the FireWire chips also infringe claims 4–5; (3) the MS410B and MS410B2 chips anticipate claims 1–3 and 6–9; (4) the MS410B and MS410B2 chips do not anticipate claim 10; (5) the Ker application does not anticipate claims 1–10; (6) claims 4–5 are obvious in view of the MS410B and MS410B2 chips and the Ker application; and (7) a domestic industry does not exist.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Issued: July 21, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–17510 Filed 7–24–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1131–1132, and 1134 (Review)]

Polyethylene Terephthalate Film, Sheet, and Strip From Brazil, China, and The United Arab Emirates

Scheduling of full five-year reviews.

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on polyethylene terephthalate film, sheet, and strip from Brazil, China, and the United Arab Emirates would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).[1] For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* July 21, 2014.

FOR FURTHER INFORMATION CONTACT: Michael Haberstroh (202–205–3390), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On January 23, 2014, the Commission determined full reviews pursuant to section 751(c)(5) of the Act should proceed (79 FR 9276, February 18, 2014). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the Reviews and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the reviews will be placed in the nonpublic record on Friday, October 24, 2014, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on Tuesday, November 18, 2014, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before Friday, November 7, 2014. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on Monday, November 10, 2014, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections

[1] In addition, the Commission has the authority to toll statutory deadlines during a period when the government is closed. Because the Commission was closed on December 10, 2013, and on January 21, February 13, March 3, and March 17, 2014 due to inclement weather in Washington, DC, the statutory deadline may be tolled by up to five days.

201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written Submissions

Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is Wednesday, November 5, 2014. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is Friday, November 28, 2014. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before Friday, November 28, 2014. On Friday, December 12, 2014, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before Monday, December 15, 2014, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov*, elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: July 21, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–17511 Filed 7–24–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Marine Sonar Imaging Systems, Products Containing the Same, and Components Thereof, DN 3023;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR § 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *EDIS*,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at *USITC.*[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *EDIS.*[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Johnson Outdoors Inc. and Johnson Outdoors Marine Electronics, Inc. on July 18, 2014. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain marine sonar imaging systems, products containing the same, and components thereof. The complaint names as respondents Garmin International, Inc. of Olathe, KS; Garmin North America, Inc. of Olathe, KS; Garmin USA, Inc. of Olathe, KS; and Garmin Corporation of Taiwan. The complainant requests that the Commission issue a limited exclusion order and cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

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[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR § 210.4(f)). Submissions should refer to the docket number (''Docket No. 3023'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *Electronic Filing Procedures* [4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR § 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on *EDIS*.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR §§ 201.10, 210.8(c)).

By order of the Commission.

Issued: July 21, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–17512 Filed 7–24–14; 8:45 am]

BILLING CODE 7020–02–P

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1210–1212 (Final)]

Welded Stainless Steel Pressure Pipe From Malaysia, Thailand, and Vietnam

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Malaysia, Thailand, and Vietnam of welded stainless steel pressure pipe, provided for in subheadings 7306.40.50 and 7306.40.10 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).[2] [3]

Background

The Commission instituted these investigations effective May 16, 2013, following receipt of a petition filed with the Commission and Commerce by Bristol Metals, L.P., of Bristol, TN; Felker Brothers Corp., of Marshfield, WI; and Outokumpu Stainless Pipe, Inc., of Schaumberg, IL. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of welded stainless steel pressure pipe from Malaysia, Thailand, and Vietnam were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC and by publishing the notice in the **Federal Register** of February 21, 2014 (79 FR 11126). The hearing was held in Washington, DC on May 22, 2014, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission completed and filed its determinations in these investigations on July 14, 2014. The views of the Commission are contained in USITC Publication 4477 (July 2014), entitled *Welded Stainless Steel Pressure Pipe from Malaysia, Thailand, and Vietnam: Investigation Nos. 731–TA–1210–1212 (Final).*

Issued: July 21, 2014.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–17469 Filed 7–24–14; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Meredith M. Broadbent, Vice Chairman Dean A. Pinkert, and Commissioner F. Scott Kieff dissenting.

[3] The Commission also finds that imports subject to Commerce's affirmative critical circumstances determination are not likely to undermine seriously the remedial effect of the antidumping duty order on Malaysia.

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0049]

Agency Information Collection Activities; Proposed eCollection, eComments Request; Reinstatement With Change of a Previously Approved Collection; InfraGard Membership Application and Profile

AGENCY: Federal Bureau of Investigation, Cyber Division, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Cyber Division's National Industry Partnership Unit (NIPU) will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** 79, Number 98, page 29205, on May 21, 2014, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until August 25, 2014.

FOR FURTHER INFORMATION CONTACT: If you have comments, especially on the estimated public burden and associated response time, should directed to Lisa Avery, Management and Program Analyst, National Industry Partnership Unit, Federal Bureau of Investigation, Cyber Division, FBIHQ, 395 E Street SW., Washington, DC 20024 or facsimile at (202) 651–3190. Written comments and/or suggestions can also be directed to the Office of Management and

Budget, Officer of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or send to *OIRA_submission@omb.eop.gov*.

SUPPLLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following three points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of the information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

1. Type of Information Collection: Personally identifiable information for vetting purposes.

2. Title of the Forms: InfraGard Membership Application and Profile.

3. Agency Form Number, if any, and the applicable component of the department sponsoring the collection: N/A

Sponsor: National Industry Partnership Unit (NIPU) Cyber Division of the Federal Bureau of Investigation (FBI), Department of Justice (DOJ)

4. Affected Public who will be asked or required to respond, as well as a brief abstract:

Primary: Members of the public and private-sector with a nexus to critical infrastructure protection interested in being a member of the FBI's National InfraGard Program.

Brief Abstract: Personal information is collected by the FBI for vetting and background information to obtain membership to the Program and access to its secure portal. InfraGard is a two-way information sharing exchange between the FBI and members of the public and private sector focused on intrusion and vulnerabilities affecting 16 critical infrastructures. Members are provided access to law enforcement sensitive analytical products pertaining to their area of expertise.

5. An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:

InfraGard has approximately 27,000 members and receives approximately 7,200 new applications for membership per year. The average response time for reading and responding to the membership application and profile is estimated to be 30 minutes.

6. An estimate of the total public burden (in hours) associated with the collection: The total hour burden for completing the application and profile is 3,600 hours. If additional information is required, contact: Jerri Murray, Department Clearance Officer, U.S. Department of Justice, Policy and Planning Staff, Justice Management Division, Two Constitution Square, 145 N Street NE., Room 3E.405B, Washington, DC 20530.

Dated: July 22, 2014.

Jerri Murray,

Department Clearance Officer for PRA, United States Department of Justice.

[FR Doc. 2014–17531 Filed 7–24–14; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–83,128]

Catalyst Paper, Inc.; Formerly Known as the Apache Railway Company; Currently Known as the Snowflake Community Foundation Snowflake, Arizona; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor (Department) issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 10, 2014, applicable to workers of Catalyst Paper (Snowflake) Inc., a subsidiary of Catalyst Paper Holdings Inc., Snowflake, Arizona. The Department's notice of determination was published in the **Federal Register** on January 28, 2014 (79 FR 4502). The workers are engaged in the production of uncoated mechanical printing papers and newsprint.

The State of Arizona Workforce Office reported that workers of the subject firm, employed under its former name, The Apache Railway Company, were excluded from this certification and requested inclusion of the workers.

The Department confirmed that The Apache Railway Company was acquired by Catalyst Paper, Inc. in 2012. Furthermore, The Apache Railway Company was acquired by The Snowflake Community Foundation in 2013. Therefore, workers who were employed by The Apache Railway Company and/or The Snowflake Foundation are part of the worker group that received a certification under this petition.

The amended notice applicable to TA–W–83,128 is hereby issued as follows:

All workers of Catalyst Paper, Inc., formerly known as The Apache Railway Company, currently known as The Snowflake Foundation, Snowflake, Arizona who became totally or partially separated from employment on or after October 1, 2012 through January 10, 2016, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 14th day of July 2014.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–17534 Filed 7–24–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such

request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 4, 2014.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 4, 2014.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 17th day of July 2014.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

Appendix

6 TAA Petitions Instituted Between 7/7/14 and 7/11/14

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
85413	Shine Electronics Company, Inc. (Workers)	Long Island City, NY	07/07/14	07/02/14
85414	Commemorative Brands, Inc. (Company)	Austin, TX	07/07/14	07/03/14
85415	Maggy London International (Workers)	New York, NY	07/08/14	06/30/14
85416	MCI Service Parts INC (Workers)	Loudonville, OH	07/08/14	07/07/14
85417	West Linn Paper Company (State/One-Stop)	West Linn, OR	07/09/14	07/08/14
85418	3 Dimensional Graphics Corporation (State/One-Stop)	Danvers, MA	07/09/14	07/07/14

[FR Doc. 2014–17535 Filed 7–24–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *July 7, 2014 through July 11, 2014.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact

date for all workers of such determination.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

85,334, Cubix Software Ltd., Inc., Longview, Texas.

85,339, Freescale Semiconductor Inc., Austin, Texas.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

85,112, UL, LLC., Melville, New York.

85,325, Tata Technologies, Inc., Auburn Hills, Michigan.

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

85,370, Walton Hills Stamping Plant, Walton Hills, Ohio.

85,390, First Advantage, Tempe, Arizona.

85,390A, First Advantage, Watertown, South Dakota.

I hereby certify that the aforementioned determinations were issued during the period of *July 7, 2014 through July 11, 2014.* These determinations are available on the Department's Web site *www.doleta.gov/tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 17th day of July, 2014.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–17536 Filed 7–24–14; 8:45 am]

BILLING CODE 4510–FN–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meeting Notice; Audit Committee Meeting of the Board of Directors

TIME & DATE: 1:00 p.m., Monday, August 4, 2014.

PLACE: NeighborWorks America—Gramlich Boardroom, 999 North Capitol Street NE., Washington, DC 20002.

STATUS: Open (with the exception of Executive Sessions).

CONTACT PERSON: Jeffrey Bryson, General Counsel/Secretary, (202) 760–4101; *jbryson@nw.org.*

AGENDA:

I. CALL TO ORDER
II. Executive Session with the Chief Audit Executive
III. Executive Session with Officers
IV. External Auditor Retainment
V. Internal Audit Reports with Management's Response
VI. FY15 Risk Assessment & Internal Audit Plan
VII. Approval of changes to the FY14 Internal Audit Plan
VIII. Internal Audit Status Reports
IX. Compliance Update
X. OHTS Watch List Review
XI. Adjournment

Jeffrey T. Bryson,

EVP & General Counsel/Corporate Secretary.

[FR Doc. 2014–17677 Filed 7–23–14; 4:15 pm]

BILLING CODE 7570–02–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Form N–17f–1. SEC File No. 270–316, OMB Control No. 3235–0359.

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 (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form N–17f–1 (17 CFR 274.219) is entitled ''Certificate of Accounting of Securities and Similar Investments of a Management Investment Company in the Custody of Members of National Securities Exchanges.'' The form serves as a cover sheet to the accountant's certificate that is required to be filed periodically with the Commission pursuant to rule 17f–1 (17 CFR 270.17f–1) under the Act, entitled ''Custody of Securities with Members of National Securities Exchanges,'' which sets forth the conditions under which a fund may place its assets in the custody of a member of a national securities exchange. Rule 17f–1 requires, among other things, that an independent public accountant verify the fund's assets at the end of every annual and semi-annual fiscal period, and at least one other time during the fiscal year as chosen by the independent accountant. Requiring an independent accountant to examine the fund's assets in the custody of a member of a national securities exchange assists Commission staff in its inspection program and helps to ensure that the fund assets are subject to proper auditing procedures. The accountant's certificate stating that it has made an examination, and describing the nature and the extent of the examination, must be attached to Form N–17f–1 and filed with the Commission promptly after each examination. The form facilitates the filing of the accountant's certificates, and increases the accessibility of the certificates to both Commission staff and interested investors. Commission staff estimates that it takes: (i) 1 hour of clerical time to prepare and file Form N–17f–1; and (ii) 0.5 hour for the fund's chief compliance officer to review Form N–17f–1 prior to filing with the Commission, for a total of 1.5 hours. Each fund is required to make 3 filings annually, for a total annual burden per fund of approximately 4.5 hours.[1] Commission staff estimates that an average of 4 funds currently file Form

[1] This estimate is based on the following calculation: (1.5 hours × 3 responses annually = 4.5 hours).

N–17f–1 with the Commission 3 times each year, for a total of 12 responses annually.[2] The total annual hour burden for Form N–17f–1 is therefore estimated to be approximately 18 hours.[3]

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Compliance with the collections of information required by Form N–17f–1 is mandatory for funds that place their assets in the custody of a national securities exchange member. Responses will not be kept confidential. 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 control number.

The Commission requests written comments on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to 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.*

Dated: July 21, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–17516 Filed 7–24–14; 8:45 am]

BILLING CODE 8011–01–P

[2] This estimate is based on a review of Form N–17f–1 filings made with the Commission over the last three years.

[3] This estimate is based on the following calculations: (4.5 hours × 4 funds = 18 total hours).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 17f–1. SEC File No. 270–236, OMB Control No. 3235–0222.

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 (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 17f–1 (17 CFR 270.17f–1) under the Investment Company Act of 1940 (the ''Act'') (15 U.S.C. 80a) is entitled: ''Custody of Securities with Members of National Securities Exchanges.'' Rule 17f–1 provides that any registered management investment company (''fund'') that wishes to place its assets in the custody of a national securities exchange member may do so only under a written contract that must be ratified initially and approved annually by a majority of the fund's board of directors. The written contract also must contain certain specified provisions. In addition, the rule requires an independent public accountant to examine the fund's assets in the custody of the exchange member at least three times during the fund's fiscal year. The rule requires the written contract and the certificate of each examination to be transmitted to the Commission. The purpose of the rule is to ensure the safekeeping of fund assets.

Commission staff estimates that each fund makes 1 response and spends an average of 3.5 hours annually in complying with the rule's requirements. Commission staff estimates that on an annual basis it takes: (i) 0.5 hours for the board of directors [1] to review and ratify the custodial contracts; and (ii) 3 hours for the fund's controller to assist the fund's independent public auditors in verifying the fund's assets. Approximately 4 funds rely on the rule annually, with a total of 4 responses.[2] Thus, the total annual hour burden for Rule 17f–1 is approximately 14 hours.[3]

Funds that rely on Rule 17f–1 generally use outside counsel to prepare the custodial contract for the board's review and to transmit the contract to the Commission. Commission staff estimates the cost of outside counsel to perform these tasks for a fund each year is $800.[4] Funds also must have an independent public accountant verify the fund's assets three times each year and prepare the certificate of examination. Commission staff estimates the annual cost for an independent public accountant to perform this service is $8,500.[5] Therefore, the total annual cost burden for a fund that relies on Rule 17f–1 would be approximately $9,300.[6] As noted above, the staff estimates that 4 funds rely on Rule 17f–1 each year, for an estimated total annualized cost burden of $37,200.[7]

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Compliance with the collections of information required by Rule 17f–1 is mandatory for funds that place their assets in the custody of a national securities exchange member. Responses will not be kept confidential. 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 control number.

The Commission requests written comments on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or

[1] Estimates of the number of hours are based on conversations with representatives of mutual funds that comply with the rule. The actual number of hours may vary significantly depending on individual fund assets. The hour burden for Rule 17f–1 does not include preparing the custody contract because that would be part of customary and usual business practice.

[2] Based on a review of Form N–17f–1 filings in over the last three years, the Commission staff estimates that an average of 4 funds rely on Rule 17f–1 each year.

[3] This estimate is based on the following calculation: (4 respondents × 3.5 hours = 14 hours). The annual burden for Rule 17f–1 does not include time spent preparing Form N–17f–1. The burden for Form N–17f–1 is included in a separate collection of information.

[4] This estimate is based on the following calculation: (2 hours of outside counsel time × $400 = $800). The staff has estimated the average cost of outside counsel at $400 per hour, based on information received from funds, fund intermediaries, and their counsel.

[5] This estimate is based on information received from fund representatives estimating the aggregate annual cost of an independent public accountant's periodic verification of assets and preparation of the certificate of examination.

[6] This estimate is based on the following calculation: ($800 + $8,500 = $9,300).

[7] This estimate is based on the following calculation: (4 funds × $9,300 = $37,200).

other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to 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.*

Dated: July 21, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–17515 Filed 7–24–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72646; File No. SR–BATS–2014–027]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rules 11.9, 11.12, 11.18, 21.1 and 21.7 of BATS Exchange, Inc.

July 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 July 9, 2014, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 11.9 to add certain functionality to the Exchange's cash equities trading platform (''BATS Equities''), to add additional detail regarding existing functionality in place on BATS Equities, and to correct certain typographical errors. The Exchange also proposes to make related changes to Rule 11.12 and to eliminate obsolete language and correct certain typographical errors in Rule 11.18, all such rules applicable to BATS Equities. Consistent with its practice of offering similar functionality for the Exchange's equity options trading platform (''BATS Options'') as it does for BATS Equities, the Exchange proposes to amend Rule 21.1 to add similar functionality to BATS Options, to add additional detail regarding existing functionality in place on BATS Options, and to conform descriptions where possible between BATS Equities and BATS Options. Finally, the Exchange proposes to make related changes to Rule 21.7.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Earlier this year, the Exchange and its affiliate BATS Y-Exchange, Inc. (''BYX'') received approval to affect a merger (the ''Merger'') of the Exchange's parent company, BATS Global Markets, Inc., with Direct Edge Holdings LLC, the indirect parent of EDGX Exchange, Inc. (''EDGX'') and EDGA Exchange, Inc. (''EDGA'', and together with BZX, BYX and EDGX, the ''BGM Affiliated Exchanges'').[5] In the context of the Merger, the BGM Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the BGM Affiliated Exchanges. Thus, many of the proposals set forth below are intended to add certain system functionality currently offered by EDGA and/or EDGX in order to provide a consistent technology offering for users of the BGM Affiliated Exchanges. In the context of such alignment, the Exchange is also seeking to improve the transparency and understandability of its rules, and has therefore proposed various corrective and clarifying changes, as described below. Finally, as noted above, BATS Equities and BATS Options offer much of the same functionality, and thus, in adding functionality and modifying rule text related to BATS Equities, the Exchange also wishes to do the same for BATS Options.

The specific proposals set forth in more detail below include: (i) The addition of Fill-or-Kill functionality for both BATS Equities and BATS Options; (ii) the addition of a new replenishment option with respect to Reserve Orders as well as additional detail regarding the existing functionality of Reserve Orders for both BATS Equities and BATS Options; (iii) the addition of rule text regarding Minimum Quantity functionality for BATS Equities and additional detail in the BATS Options description of Minimum Quantity functionality; (iv) the addition of Stop Orders and Stop Limit Orders for both BATS Equities and BATS Options; and (v) various corrections to typographical errors in Exchange rules, elimination of obsolete language in Rule 11.18 as well as the addition of detail to the routing portion of Rule 11.18.

Fill-or-Kill (''FOK'') Functionality

BATS Equities

The Exchange proposes to add a Time-in-Force (''TIF'') term of Fill-or-Kill (''FOK'') to BATS Equities. BATS Equities currently offers five other TIF terms pursuant to Rule 11.9(b), including Immediate-or-Cancel (''IOC''). The Exchange proposes to add FOK as a sixth TIF option for BATS Equities, which would be numbered as 11.9(b)(6). As proposed, a FOK would be a limit order that is to be executed in its entirety as soon as it is received and, if not so executed, cancelled.

Example 1—FOK Executes

Assume the NBBO is 10.00 × 10.01 and the Exchange has a displayed order to buy 100 shares at 10.00 and a non-displayed order to buy 100 shares at 10.00. Assume that a User[6] submits a limit order to sell 200 shares at 10.00 that is designated with a TIF of FOK.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR–BATS–2013–059; SR–BYX–2013–039).

[6] As defined in BATS Rule 1.5(cc), a User is ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.''

• The order to sell 200 shares would execute against the resting displayed and non-displayed orders at 10.00.

Example 2—FOK Does Not Execute

Assume the NBBO is 10.00 × 10.01 and the Exchange has a displayed order to buy 100 shares at 10.00 and no other equal or better priced liquidity. Assume that a User submits a limit order to sell 200 shares at 10.00 that is designated with a TIF of FOK.

• The order to sell 200 shares would be cancelled back to the User because the order could not be executed in its entirety upon receipt by the Exchange.

An order designated as FOK is similar to an IOC order and unique from other TIFs in that it is either executed immediately or cancelled back to a User, and thus, the Exchange also proposes to modify Rules 11.9(e)(1) and 11.18(e)(5) to add reference to orders with a TIF of FOK alongside references to orders with a TIF of IOC, as described below. First, Rule 11.9(e)(1) states that an order may only be cancelled or replaced if the order has a TIF term other than IOC and if the order has not yet been executed. The Exchange proposes to modify Rule 11.9(e)(1) to include the TIF of FOK as another TIF that, when attached to an order, would mean that the order cannot be cancelled or replaced. Second, Rule 11.18(e)(5) describes the operation of BATS market orders [7] and IOC orders in the context of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'').[8] The Exchange proposes to modify Rule 11.18(e)(5) to include orders with a TIF of FOK along with such description. Specifically, the Exchange proposes to make clear that, like IOC and BATS market orders, FOK orders will only be executed if such executions are possible at or within the price bands prescribed by the Limit Up-Limit Down Plan, and that if an order with a TIF of FOK cannot be so executed, the remainder of the order will be cancelled.

BATS Options

The Exchange also proposes to add a TIF term of Fill-or-Kill (''FOK'') to BATS Options. BATS Options currently offers four other TIF terms pursuant to Rule 21.1(f), including Immediate Or Cancel (''IOC''). The Exchange proposes to add FOK as a fifth TIF option for BATS Equities [sic], which would be numbered as 21.1(f)(5). As proposed, a FOK would be a limit order that is to be executed in its entirety as soon as it is received and, if not so executed, cancelled. Thus, the proposed definition is identical to the proposed definition for BATS Equities, as is the proposed operation of FOK functionality.

Example 1—FOK Executes

Assume the NBBO is 10.00 × 10.05 and the Exchange has a displayed order to buy 10 contracts at 10.00 with reserve size of 10 contracts. Assume that a User submits a limit order to sell 20 contracts at 10.00 that is designated with a TIF of FOK.

• The order to sell 20 contracts would execute against the displayed and reserve size of the resting reserve order at 10.00.

Example 2—FOK Does Not Execute

Assume the NBBO is 10.00 × 10.05 and the Exchange has a displayed order to buy 10 contracts at 10.00 and no other equal or better priced liquidity. Assume that a User submits a limit order to sell 20 contracts at 10.00 that is designated with a TIF of FOK.

• The order to sell 20 contracts would be cancelled back to the User because the order could not be executed in its entirety upon receipt by the Exchange.

Consistent with BATS Equities, an order designated as FOK is similar to an IOC order, and thus, the Exchange proposes to modify Rule 21.7(a), which describes the process by which BATS Options opens its market each trading day, and includes IOC amongst orders that are not accepted prior to the Exchange's opening process. The Exchange proposes to add orders designated as FOK to the list of orders not accepted prior to the opening process.

Reserve Orders and Replenishment

BATS Equities

The Exchange currently offers Reserve Orders, which are defined in Rule 11.9(c)(1) as limit orders ''with a portion of the quantity displayed . . . and with a reserve portion of the quantity . . . that is not displayed.'' Pursuant to current Rule 11.12(a)(5), the displayed quantity of a Reserve Order has time priority as of the time of display. Further, as currently described, if the displayed quantity of the Reserve Order is decremented such that 99 shares or fewer would be displayed, the displayed portion of the Reserve Order shall be refreshed for (i) the original displayed quantity, or (ii) the entire reserve quantity, if the remaining reserve quantity is smaller than the original displayed quantity. Finally, as set forth in Rule 11.12(a)(5), a new timestamp is created both for the refreshed and reserved portion of the order each time it is refreshed from reserve.

The Exchange proposes to add Random Replenishment functionality, as described below, and to [sic] additional detail to Rule 11.9(c)(1), which defines Reserve Orders. In making these changes, the Exchange proposes to remove details regarding replenishment from Rule 11.12(a)(5), as such details are proposed to be included in Rule 11.9(c)(1).

The Exchange proposes to leave the current definition of Reserve Order as currently drafted, but to add the defined terms ''Display Quantity'' to refer to the displayed quantity of a Reserve Order and ''Reserve Quantity'' to refer to the non-displayed quantity of a Reserve Order. The Exchange also proposes to explicitly state within Rule 11.9(c)(1) that both the Display Quantity and the Reserve Quantity of a Reserve Order are available for execution against incoming orders.

As noted above, the Exchange currently sets forth the details regarding replenishment of a Reserve Order in Rule 11.12(a)(5). The Exchange proposes to move these details to Rule 11.9(c)(1) and to make certain changes necessary to support the proposed Random Replenishment functionality. Specifically, proposed Rule 11.9(c)(1) would state that if the Display Quantity of an order is reduced to less than a round lot, the System will, in accordance with the User's instruction, replenish the Display Quantity from the Reserve Quantity using one of the replenishment instructions set forth in the Rule. The Exchange also proposes to state in Rule 11.9(c)(1) that if the remainder of an order is less than the replenishment amount, the System [9] will replenish and display the entire remainder of the order.

The Exchange currently requires Users to designate the original display quantity of an order, which is also the amount to which an order is replenished (unless the remainder of an order is smaller than the original displayed quantity) under the current replenishment functionality. The Exchange refers to this quantity as ''max floor'' in its specifications. The Exchange proposes to add a defined term of ''Max Floor'' to Rule 11.9(c)(1), which would be a mandatory value entered by a User that will determine the quantity of the order to be initially displayed by the System and will also

[7] *See* Rule 11.9(a)(2) for a description of BATS market orders.

[8] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[9] As defined in BATS Rule 1.5(aa), the System is the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.

be used to determine the replenishment amount under both replenishment options described below.

The Exchange currently offers one replenishment option, which uses the number of shares from reserve necessary to return the displayed quantity of an order to its original display amount. The Exchange proposes to retain this replenishment option and to define it as ''Fixed Replenishment.'' As proposed, Fixed Replenishment will apply to any order for which Random Replenishment has not been selected. Under the Fixed Replenishment option, the System will replenish the Display Quantity of an order to the Max Floor designated by the User.

The Exchange also proposes to add a new replenishment option, Random Replenishment. As proposed, Random Replenishment is an instruction that a User may attach to an order with Reserve Quantity where replenishment quantities for the order are randomly determined by the System within a replenishment range established by the User. Further, as proposed, the User entering an order into the System subject to the Random Replenishment instruction must select a replenishment value and a Max Floor. The initial Display Quantity will be the Max Floor. The Display Quantity of an order when replenished will be determined by the System randomly selecting a round lot number of shares within a replenishment range that is between: (i) The Max Floor minus the replenishment value; and (ii) the Max Floor plus the replenishment value. The Exchange believes that the Random Replenishment is an optimization of current System functionality as it will help to achieve the general goal of Reserve Orders, which is to display less than the full interest that one represents in order to avoid moving the market. Random Replenishment will help Users to further disguise reserve interest by replenishing the Display Quantity of a Reserve Order to a variable amount so that other participants are less likely to detect that such order is in fact a Reserve Order with additional non-displayed size.

In addition to the changes set forth above, the Exchange proposes to modify Rule 11.9(e)(3) to state that the Max Floor set for an order can be modified through the use of a replace message rather than requiring a User to cancel and re-enter an order. The Exchange also proposes to modify Rule 11.12(a)(3) to make clear that a modification to the Max Floor of a Reserve Order will not cause such order to lose priority. The Exchange believes that this is appropriate because a modification to Max Floor of a resting Reserve Order will not change the handling or display of the order in any way until replenishment is caused due to the reduction of the Display Quantity to less than a round lot. When such replenishment occurs (based on the new Max Floor), the order will receive a new timestamp, and thus, will have a new priority.

Example 1(a)—Fixed Replenishment

Assume the NBBO is 10.00 × 10.01 and the Exchange has a displayed order to buy 100 shares at 9.99, a displayed order to sell 100 shares at 10.01, and no other equal or better priced liquidity.

- A User enters an order into the System to buy 10,000 shares at 10.00 with a Display Quantity (i.e., Max Floor) of 1,000 shares and a Reserve Quantity of 9,000 shares. Because Random Replenishment was not designated the order defaults to a Fixed Replenishment quantity of 1,000 shares.
- An inbound market order to sell 400 shares is entered into the System and executes against the Display Quantity of 1,000 shares, resulting in a remaining Display Quantity of 600 shares.
- Another market order to sell 600 shares is entered into the System and executes against the 600 displayed shares. The Display Quantity is then replenished by the System from the Reserve Quantity to the order's original displayed quantity of 1,000 shares, resulting in a remaining Reserve Quantity of 8,000 shares. Both the Display Quantity and the Reserve Quantity receive new timestamps upon replenishment.

Example 1(b)—Fixed Replenishment

Assume the NBBO is 10.00 × 10.01 and the Exchange has a displayed order to buy 100 shares at 9.99, a displayed order to sell 100 shares at 10.01, and no other equal or better priced liquidity.

- User A enters Order 1, a limit order to buy 6,000 shares at 10.00, the NBB, with a Display Quantity (i.e., Max Floor) of 1,000 shares and a Reserve Quantity of 5,000 shares. Because Random Replenishment was not designated the order defaults to a Fixed Replenishment quantity of 1,000 shares.
- User B then enters Order 2, a display-eligible limit order to buy 600 shares at 10.00 with no Reserve Quantity.
- An inbound market order to sell 2,000 shares is entered into the System.
- The order to sell first executes against the Display Quantity of 1,000 shares of Order 1, then executes against the full 600 shares of Order 2, and then executes against 400 shares of the Reserve Quantity of Order 1 (i.e., the displayed quantities of Orders 1 and 2 execute in time priority, followed by the Reserve Quantity of Order 1).
- The Display Quantity of Order 1 is then replenished for 1,000 shares, leaving a Reserve Quantity of 3,600 shares. Both the Display Quantity and the Reserve Quantity receive new timestamps upon replenishment.

Example 2(a)—Random Replenishment

Assume the NBBO is 10.00 × 10.01 and the Exchange has a displayed order to buy 100 shares at 9.99, a displayed order to sell 100 shares at 10.01, and no other equal or better priced liquidity.

- A User enters an order into the System to buy 10,000 shares at 10.00 and designates such order for Random Replenishment with a Max Floor of 1,000 shares and a replenishment value of 400 shares.
- The initial Display Quantity of the order is 1,000 shares and the Reserve Quantity is 9,000 shares.
- An inbound market order to sell 950 shares is entered into the System and executes against the Display Quantity of the order (1,000 shares), leaving a 50 share Display Quantity. Because the remaining Display Quantity is less than a round lot, the System will replenish the Display Quantity.
- With a replenishment value of 400, subsequent replenishments will return the Display Quantity to a randomly selected round lot value between 600 shares (i.e., Max Floor minus the replenishment value) and 1,400 shares (i.e., Max Floor plus the replenishment value).
- Assume the System selects a Display Quantity of 1,200 shares. The System will refresh the order with 1,150 shares from the Reserve Quantity, thus generating a new Display Quantity of 1,200 shares to sell at 10.00, and a Reserve Quantity of 7,850 shares.

Example 2(b)—Random Replenishment

Assume the NBBO is 10.00 × 10.01 and the Exchange has a displayed order to buy 100 shares at 9.99, a displayed order to sell 100 shares at 10.01, and no other equal or better priced liquidity.

- A User enters an order into the System to buy 5,000 shares at 10.00 and designates such order for Random Replenishment with a Max Floor of 2,000 shares and a replenishment value of 1,000 shares.
- The initial Display Quantity of the order is 2,000 shares and the Reserve Quantity is 3,000 shares.
- An inbound market order to sell 1,800 shares is entered into the System and executes against the Display

Quantity of the order (2,000 shares), leaving a 200 share Display Quantity.

• A second inbound market order to sell 700 shares is entered into the System and executes against the Display Quantity of the order (200 shares) and 500 shares of the Reserve Quantity of the order, leaving no Display Quantity and a Reserve Quantity of 2,500 shares.

• With a replenishment value of 1,000, subsequent replenishments would otherwise return the Display Quantity to a randomly selected round lot value between 1,000 shares (i.e., Max Floor minus the replenishment value) and 3,000 shares (i.e., Max Floor plus the replenishment value). However, in this example, because the Reserve Quantity is now 2,500 shares, the System would instead replenish the Display Quantity to a round lot value between 1,000 and 2,500 shares.

• Assume the System selects a Display Quantity of 2,000 shares, leaving a Reserve Quantity of 500 shares.

• An inbound market order to sell 2,050 shares is entered into the System and executes against the Display Quantity of the order (2,000 shares) and 50 shares of the Reserve Quantity of the order, leaving no Display Quantity and a Reserve Quantity of 450 shares. Because the remaining Reserve Quantity is less than the lower end of the replenishment range (i.e., 1,000 shares), the System will Display the entire remainder of the order, or 450 shares.

BATS Options

The Exchange also offers Reserve Order functionality for BATS Options, with the only notable difference being that Reserve Orders do not replenish until the displayed quantity of the order is fully executed on BATS Options, whereas on BATS Equities, Reserve Orders replenish once the Display Quantity is less than a round lot. Accordingly, in order to keep both the rule text and the functionality offered by BATS Equities and BATS Options the same, the Exchange is proposing changes to Rule 21.1(d)(1) that are similar to those described for BATS Equities above. In addition, the Exchange is proposing to correct an error in its current rule text. Specifically, the Exchange's current rules state that the reserve portion of an order retains the timestamp of its original entry when replenishment occurs. However, the BATS Options functionality is indeed the same as that on BATS Equities in that a new timestamp is created for both the replenished and reserved amount each time the order is replenished from the reserve quantity. Accordingly, the Exchange proposes to modify the language to conform to that of BATS Equities.

The Exchange notes that the examples of Fixed Replenishment and Random Replenishment would operate the same on BATS Options as set forth for BATS Equities, with the exception that replenishment does not occur until the Display Quantity is completely exhausted.

Minimum Quantity Functionality

BATS Equities

The Exchange proposes to codify existing functionality already offered by BATS Equities by introducing a definition of Minimum Quantity Order in Rule 11.9(c)(5). The Exchange notes that the main difference between a Minimum Quantity Order and an order with a TIF of FOK is that an order with a specified minimum quantity may be partially executed so long as the execution size is equal to or exceeds the quantity provided by the User whereas a FOK Order must be executed in full.

A Minimum Quantity Order, as proposed, is a limit order to buy or sell that will only execute if a specified minimum quantity of shares can be obtained. The Exchange proposes to state in Rule 11.9(c)(5) that orders with a specified minimum quantity will only execute against multiple, aggregated orders if such executions would occur simultaneously (rather than only executing against a single order that satisfies the applicable minimum quantity). Finally, the Exchange will only honor a specified minimum quantity on BATS Only Orders that are non-displayed or IOCs. The Exchange will disregard a minimum quantity on any other order.

The Exchange notes that a specified minimum quantity is only applicable to BATS Only Orders, which are not routed to other market centers, because of the practical difficulty the Exchange would face in trying to achieve a minimum quantity through its routing process. For instance, although most market centers have a feature similar to or identical to the Exchange's minimum quantity functionality, the Exchange cannot guarantee that all away market centers would always have such functionality. Minimum quantity is also inconsistent with routed orders because under most of the Exchange's routing options an order is split into multiple smaller orders that are routed simultaneously to away market centers. Similarly, the Exchange notes that a specified minimum quantity is only possible to apply to non-displayed orders or IOCs due to the Exchange's obligations to honor displayed quotations by executing such quotations against incoming orders.[10] By limiting the minimum quantity instruction to non-displayed orders or IOCs the Exchange avoids the display of a quotation that is not executable unless a specific condition is met.

Example 1—Minimum Quantity Order Executes

Assume the NBBO is 10.00 × 10.01 and the Exchange has a displayed order to buy 100 shares at 10.00 and a non-displayed order to buy 100 shares at 10.00. Assume that a User submits an IOC limit order to sell 500 shares at 10.00 with a minimum quantity of 200 shares.

• The order to sell 500 shares would receive a partial execution of 200 shares against the resting displayed and non-displayed orders at 10.00. The remaining 300 shares would be cancelled back to the User.

Example 2—Minimum Quantity Order Does Not Execute

Assume the NBBO is 10.00 × 10.01 and the Exchange has a displayed order to buy 100 shares at 10.00 and a non-displayed order to buy 100 shares at 10.00. Assume that a User submits an IOC limit order to sell 500 shares at 10.00 with a minimum quantity of 300 shares.

• The order to sell would be cancelled back to the User because the required execution of at least 300 shares could not be satisfied upon receipt by the Exchange.

BATS Options

Minimum Quantity Orders available on BATS Options are defined in Rule 21.1(d)(3). The main substantive difference between the functionality offered by BATS Equities and that offered by BATS Options is that a specified minimum quantity will only be honored on BATS Options with respect to an IOC order because non-displayed orders are not accepted by BATS Options. Thus, Minimum Quantity Orders cannot rest on the BATS Options order book. The Exchange proposes to modify the definition of Minimum Quantity Order for BATS Options to make clear that while a Minimum Quantity Order can execute against multiple, aggregated orders (rather than only executing against a single order that satisfies the applicable minimum quantity), such execution will only occur if it would occur simultaneously. The Exchange

[10] See, e.g., Rule 602 of Regulation NMS (the "Firm Quote Rule"). 17 CFR 240.602.

also proposes to delete reference to the rejection of Minimum Quantity Orders received prior to the market open or after the market close. Because a Minimum Quantity Order must be an IOC to be entered into BATS Options, it is true that such orders are not accepted prior to the open as IOCs are rejected pursuant to Rule 21.7, as described above. However, because this is described in Rule 21.7 and does not appear in other rules describing BATS Options order types or order type modifiers, the Exchange believes that the reference is redundant and potentially confusing. Because the Exchange rejects all orders received by BATS Options after the close the Exchange believes that the reference to post-close orders in the Minimum Quantity Order description is unnecessary and potentially confusing.

The Exchange notes that the first two examples of Minimum Quantity Orders set forth above would operate the same on BATS Options as set forth for BATS Equities. The third example [sic] is inapplicable because, as described above, Minimum Quantity Orders cannot post to the BATS Options order book.

Stop and Stop Limit Order Functionality

BATS Equities

The Exchange proposes to adopt new orders that trigger based on trades occurring on the Exchange or reported on other marketplaces. Specifically, the Exchange proposes to adopt Stop Orders and Stop Limit Orders. Stop Orders and Stop Limit Orders are not executable unless and until their stop price is triggered. As proposed, a Stop Order is an order that becomes a BATS market order [11] when the stop price is elected. In contrast, a Stop Limit Order is an order that becomes a limit order when the stop price is elected. The triggering events for Stop Orders and Stop Limit Orders will be the same. A Stop Order or Stop Limit Order to buy will be elected when the consolidated last sale in the security occurs at, or above, the specified stop price. A Stop Order or Stop Limit Order to sell will be elected when the consolidated last sale in the security occurs at, or below, the specified stop price.

Example 1—Stop Order Is Triggered

Assume the NBBO is 7.80 × 8.00. Assume that a User submits a Stop Order to buy 500 shares with a stop price of 8.05.

- Assume the NBBO shifts gradually upwards to 8.00 by 8.05. An execution reported by another exchange at 8.05 will trigger the stop price of the Stop Order, which will convert into a BATS market order to buy.

Example 2—Stop Limit Order Is Triggered

Assume the NBBO is 7.84 × 7.85. Assume that a User submits a Stop Limit Order to buy 500 shares at 8.04 with stop limit price of 8.05.

- Assume the NBBO shifts gradually upwards to 8.03 by 8.05. An execution reported by another exchange at 8.05 will trigger the stop price of the Stop Limit Order, which will convert into a limit order to buy at 8.04.

In addition to the changes set forth above, the Exchange proposes to modify Rule 11.9(e)(3) to state that the stop price of an order can be modified through the use of a replace message rather than requiring a User to cancel and re-enter an order. The Exchange also proposes to modify Rule 11.12(a)(3) to make clear that a modification to the stop price of a Stop Order or Stop Limit Order will not cause such an order to lose priority. The Exchange believes that this is appropriate because a modification to the stop price of a resting order will not change the handling of the order in any way other than to trigger the order based on a different subsequent trade than the order otherwise would have.

BATS Options

The Exchange proposes to adopt for BATS Options the same description of Stop Orders and Stop Limit Orders as it is proposing for BATS Equities. There are no substantive differences between the way that Stop Orders and Stop Limit Orders will operate as between BATS Equities and BATS Options.

Stop and stop limit order functionality is also offered by several other Exchange competitors of BATS Options, including NYSE MKT LLC (''NYSE MKT'') (pursuant to Rule 900.3NY) and the International Securities Exchange (''ISE'') (pursuant to Rule 715). The Exchange notes that there are substantive differences with respect to the event that triggers a stop order or stop limit order between the market centers that offer such functionality. For instance, pursuant to NYSE MKT Rule 900.3NY, a stop order or stop limit order is triggered based on consolidated trades or quotes on the exchange. The ISE, in contrast, triggers stop orders and stop limit orders on trades only but looks to trades on the ISE rather than consolidated trades. The Exchange has proposed triggering Stop Orders and Stop Limit Orders on consolidated trades, including the Exchange, which is consistent with the NYSE MKT implementation. However, the Exchange does not propose to trigger Stop Orders or Stop Limit Orders based on quotes, which is consistent with the ISE implementation. As noted above, the Exchange prefers to retain consistency when possible between functionality offered by BATS Equities and BATS Options.

The Exchange notes that the examples of Stop Orders and Stop Limit Orders set forth above would operate the same on BATS Options as they would on BATS Equities.

Additional Changes

The Exchange proposes to correct three incorrect internal cross-references in Rule 11.9(c)(7)(B), each of which points to paragraph (c)(6)(A) but is intended to refer to paragraph (c)(7)(A). The Exchange proposes to instead simply reference paragraph (A) above, which the Exchange believes is sufficient detail when read in context.

The Exchange also proposes to eliminate all references in Rule 11.18 to individual stock trading pauses issued by a primary listing market and related definitions, which are contained in Rule 11.18(d), 11.18(e)(6) and 11.18(f). The stock trading pauses described in such provisions have been fully phased out as securities have become subject to the Limit Up-Limit Down Plan. The Plan is already operational with respect to all securities, and thus, the Exchange believes that all references to individual stock trading pauses should be removed. This change will also serve to eliminate certain duplicative references that have occurred through amendments to Rule 11.18, including amendments related to the operation of the Limit Up-Limit Down Plan as well as other amendments. The Exchange also proposes various other corrections to the numbering of Rule 11.18 for consistency with other portions of its rules. The Exchange also proposes to eliminate a reference to the operational date of the Limit Up-Limit Down Plan now that it is, in fact, already operational.

In reviewing Rule 11.18 in connection with the above-described corrections, the Exchange determined to also add additional detail to the routing description of Rule 11.18 to reflect the existing functionality of the System. In particular, the Exchange proposes to affirmatively state in Rule 11.18 that the System will not route buy (sell) interest at a price above (below) the Upper (Lower) Price Band.[12] Because

[11] See Rule 11.9(a)(2).

[12] The Upper Price Band and Lower Price Band are defined terms in the Limit Up-Limit Down Plan.

executions cannot occur outside of applicable price bands anyway, the Exchange believes it is inefficient to route orders outside of price bands. For example, assume that the Lower Price Band is $9.50 and the Upper Price Band is $10.50. Further assume the NBBO is $10.00 by $11.00, and thus, that the national best offer of $11.00 is not executable.[13] If the Exchange received a routable limit order to buy at $11.00 such order would not be routed to the available quotation(s) at $11.00 because such quotation could not be executed. The Exchange notes that the proposed rule text reflecting that the Exchange will not route if there are not executable quotations available is consistent with the rules of several other market centers, including EDGA and EDGX.[14]

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act'')[15] and further the objectives of Section 6(b)(5) of the Act[16] because they are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[17] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets.

The proposed rule changes to add functionality are generally intended to add certain system functionality currently offered by EDGA and/or EDGX in order to provide a consistent technology offering for the BGM Affiliated Exchanges. A consistent technology offering, in turn, will simplify the technology implementation, changes and maintenance by Users of the Exchange that are also participants on BYX, EDGA and/or EDGX. The proposed rule changes would also provide Users with access to functionality that is generally available on markets other than the BGM Affiliated Exchanges and may result in the efficient execution of such orders and will provide additional flexibility as well as increased functionality to the Exchange's System and its Users. The Exchange also believes that the changes to correct or provide additional specificity regarding the functionality of the System would promote just and equitable principles of trade and remove impediments to a free and open market by providing greater transparency concerning the operation of the System. The Exchange also believes that the proposed amendments will contribute to the protection of investors and the public interest by making the Exchange's rules easier to understand.

As explained elsewhere in this proposal, the proposed FOK functionality is similar to existing IOC and Minimum Quantity functionality and is available on numerous other market centers, including EDGA and EDGX. Similarly, the proposed Minimum Quantity functionality for BATS Equities is intended to codify functionality that has been available on the Exchange since its inception and is available on numerous other market centers, including BATS Options. Finally, the Stop Orders and Stop Limit Orders that the Exchange proposes to add are available on numerous other market centers, including EDGA and EDGX. Thus, the Exchange believes that each of these proposed functionality additions have already been accepted as consistent with the Act and offered by various market centers for many years. Also, to the extent any of the proposals differ from functionality available on other market centers as described elsewhere in this proposal, the Exchange does not believe that any such differences present any additional policy issues to be considered under the Act. The Exchange's addition of such functionality is consistent with the Act for the reasons set forth above.

The Exchange believes that the additional detail with respect to the operation of Reserve Orders and restructuring to move certain descriptions related to Reserve Order handling from Rule 11.12 to Rule 11.9 are consistent with the Act for the reasons set forth above related to transparency of the operation of the System. The Exchange believes that the addition of the Random Replenishment option is consistent with the Act as it will help to achieve the general goal of Reserve Orders, which is to display less than the full interest that one represents in order to avoid moving the market. Random Replenishment will help Users to further disguise reserve interest by replenishing the Display Quantity of a Reserve Order to a variable amount so that other participants are less likely to detect that such order is in fact a Reserve Order with additional non-displayed size. Given the consistency of this functionality with the overall intent of Reserve Orders, and the widespread and longstanding offering of Reserve Orders by most market centers, the Exchange believes that the Random Replenishment option is consistent with the Act.

As explained above, the Exchange is proposing to correct the error in its current rule text with respect to the creation of a new timestamp for both the replenished and reserved amount of a Reserve Order each time the order is replenished from the reserve quantity on BATS Options. The Exchange believes that this change is consistent with the Act in that it provides clarity with respect to the functionality of the System and operates the same as Reserve Orders on BATS Equities, which have applied a new timestamp to both the replenished and reserved amount in accordance with BATS Equities rules since the inception of the Exchange. The Exchange does not believe that providing a new timestamp to the replenished and reserved amounts of a Reserve Order is in any way less consistent with the Act than allowing the reserve portion of an order to retain its original timestamp. Rather, the Exchange simply believes that this is an implementation detail and that the functionality could operate either way consistently with the Act. The Exchange also believes that its implementation in which Reserve Orders are assigned a new timestamp each time that the displayed portion is replenished from reserve is consistent with the Act in that it keeps the timestamp for the entire order the same (for both the displayed and reserve portions of the order) each time the order is modified with respect to its displayed and reserved size.

The Exchange believes that the proposed change with respect to the fact that the Exchange does not route orders outside of price bands established by the Limit Up-Limit Down Plan is consistent with the Act in that it reflects the current operation of the System, is consistent with the rules of other Exchanges that have adopted such functionality consistent with the Act, and because routing such orders would be inefficient, even if they would return to the Exchange unexecuted. As described above, the Exchange believes

[13] The Exchange notes that this condition, with the national best bid and/or national best offer outside of applicable price bands, is defined in the Plan as Straddle State (as long as the security is not in a Limit State). The Exchange also notes that pursuant to the Plan if a security is in a Straddle State and trading in that stock deviates from normal trading characteristics, the applicable listing exchange may, but is not required to, declare a trading pause for that security.

[14] *See, e.g.,* EDGA Rule 11.9(b)(1)(B)(i); EDGX Rule 11.9(b)(1)(B)(i); NASDAQ Rule 4120(a)(12)(E)(4); NYSE Arca Rule 7.11(a)(7).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78k–1(a)(1).

that the other proposed changes to its rulebook to correct typographical changes and add additional detail to the way that certain functionality currently operates provides further clarification to Members, Users, and the investing public regarding the operation of the Exchange's System.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange reiterates that the proposed rule change is being proposed in the context of the technology integration of the BGM Affiliated Exchanges. Thus, the Exchange believes this proposed rule change is necessary to permit fair competition among national securities exchanges. In addition, the Exchange believes the proposed rule change will benefit Exchange participants in that it is one of several changes necessary to achieve a consistent technology offering by the BGM Affiliated Exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and Rule 19b–4(f)(6) thereunder.[19]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [20] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [21] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay, noting that doing so will allow the Exchange to immediately clarify its rules with respect to existing functionality already offered by the Exchange; correct typographical errors in the Exchange's rules; and offer certain functionality that is already available on other market centers, which will allow the Exchange to remain competitive with such other market centers. In addition, the Exchange states that, to the extent a proposed change optimizes existing functionality, the Exchange does not believe that there is a reason to delay the availability of such optimization. Furthermore, the Exchange states that waiver of the operative delay will allow the Exchange to continue to strive towards a complete technology integration of the BGM Affiliated Exchanges, with gradual roll-outs of new functionality to ensure stability of the System. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2014–027 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–BATS–2014–027. 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–BATS–2014–027 and should be submitted on or before August 15, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

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[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give 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, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72647; File No. SR–BYX–2014–010]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rules 11.9, 11.12, and 11.18 of BATS Y-Exchange, Inc.

July 21, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on July 15, 2014, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 11.9 to add certain functionality to the Exchange's trading platform, to add additional detail regarding existing functionality in place on the Exchange, and to correct certain typographical errors. The Exchange also proposes to make related changes to Rule 11.12 and to eliminate obsolete language and correct certain typographical errors in Rule 11.18.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Earlier this year, the Exchange and its affiliate BATS Exchange, Inc. (''BZX'') received approval to affect a merger (the ''Merger'') of the Exchange's parent company, BATS Global Markets, Inc., with Direct Edge Holdings LLC, the indirect parent of EDGX Exchange, Inc. (''EDGX'') and EDGA Exchange, Inc. (''EDGA'', and together with BZX, BYX and EDGX, the ''BGM Affiliated Exchanges'').[5] In the context of the Merger, the BGM Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the BGM Affiliated Exchanges. Thus, many of the proposals set forth below are intended to add certain system functionality currently offered by EDGA and/or EDGX in order to provide a consistent technology offering for users of the BGM Affiliated Exchanges. In the context of such alignment, the Exchange is also seeking to improve the transparency and understandability of its rules, and has therefore proposed various corrective and clarifying changes, as described below.

The specific proposals set forth in more detail below include: (i) The addition of Fill-or-Kill functionality; (ii) the addition of a new replenishment option with respect to Reserve Orders as well as additional detail regarding the existing functionality of Reserve Orders; (iii) the addition of rule text regarding Minimum Quantity functionality; (iv) the addition of Stop Orders and Stop Limit Orders; and (v) various corrections to typographical errors in Exchange rules, elimination of obsolete language in Rule 11.18 as well as the addition of detail to the routing portion of Rule 11.18.

Fill-or-Kill (''FOK'') Functionality

The Exchange proposes to add a Time-in-Force (''TIF'') term of Fill-or-Kill (''FOK''). The Exchange currently offers five other TIF terms pursuant to Rule 11.9(b), including Immediate-or-Cancel (''IOC''). The Exchange proposes to add FOK as a sixth TIF option, which would be numbered as 11.9(b)(6). As proposed, a FOK would be a limit order that is to be executed in its entirety as soon as it is received and, if not so executed, cancelled.

Example 1—FOK Executes

Assume the NBBO is 10.00 × 10.01 and the Exchange has a displayed order to buy 100 shares at 10.00 and a non-displayed order to buy 100 shares at 10.00. Assume that a User[6] submits a limit order to sell 200 shares at 10.00 that is designated with a TIF of FOK.

- The order to sell 200 shares would execute against the resting displayed and non-displayed orders at 10.00.

Example 2—FOK Does not Execute

Assume the NBBO is 10.00 × 10.01 and the Exchange has a displayed order to buy 100 shares at 10.00 and no other equal or better priced liquidity. Assume that a User submits a limit order to sell 200 shares at 10.00 that is designated with a TIF of FOK.

- The order to sell 200 shares would be cancelled back to the User because the order could not be executed in its entirety upon receipt by the Exchange.

An order designated as FOK is similar to an IOC order and unique from other TIFs in that it is either executed immediately or cancelled back to a User, and thus, the Exchange also proposes to modify Rules 11.9(e)(1) and 11.18(e)(5) to add reference to orders with a TIF of FOK alongside references to orders with a TIF of IOC, as described below. First, Rule 11.9(e)(1) states that an order may only be cancelled or replaced if the order has a TIF term other than IOC and if the order has not yet been executed. The Exchange proposes to modify Rule 11.9(e)(1) to include the TIF of FOK as another TIF that, when attached to an order, would mean that the order cannot be cancelled or replaced. Second, Rule 11.18(e)(5) describes the operation of BATS market orders[7] and IOC orders in the context of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'').[8] The Exchange proposes to modify Rule 11.18(e)(5) to include orders with a TIF of FOK along with such description. Specifically, the Exchange proposes to make clear that, like IOC and BATS market orders, FOK orders will only be executed if such executions are possible at or within the price bands prescribed by the Limit Up-Limit Down Plan, and that if an order with a TIF of FOK cannot be so executed, the remainder of the order will be cancelled.

Reserve Orders and Replenishment

The Exchange currently offers Reserve Orders, which are defined in Rule 11.9(c)(1) as limit orders ''with a portion of the quantity displayed . . . and with a reserve portion of the quantity . . . that is not displayed.'' Pursuant to current Rule 11.12(a)(5), the displayed

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR–BATS–2013–059; SR–BYX–2013–039).

[6] As defined in BYX Rule 1.5(cc), a User is ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.''

[7] *See* Rule 11.9(a)(2) for a description of BATS market orders.

[8] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

quantity of a Reserve Order has time priority as of the time of display. Further, as currently described, if the displayed quantity of the Reserve Order is decremented such that 99 shares or fewer would be displayed, the displayed portion of the Reserve Order shall be refreshed for (i) the original displayed quantity, or (ii) the entire reserve quantity, if the remaining reserve quantity is smaller than the original displayed quantity. Finally, as set forth in Rule 11.12(a)(5), a new timestamp is created both for the refreshed and reserved portion of the order each time it is refreshed from reserve.

The Exchange proposes to add Random Replenishment functionality, as described below, and to [sic] additional detail to Rule 11.9(c)(1), which defines Reserve Orders. In making these changes, the Exchange proposes to remove details regarding replenishment from Rule 11.12(a)(5), as such details are proposed to be included in Rule 11.9(c)(1).

The Exchange proposes to leave the current definition of Reserve Order as currently drafted, but to add the defined terms ''Display Quantity'' to refer to the displayed quantity of a Reserve Order and ''Reserve Quantity'' to refer to the non-displayed quantity of a Reserve Order. The Exchange also proposes to explicitly state within Rule 11.9(c)(1) that both the Display Quantity and the Reserve Quantity of a Reserve Order are available for execution against incoming orders.

As noted above, the Exchange currently sets forth the details regarding replenishment of a Reserve Order in Rule 11.12(a)(5). The Exchange proposes to move these details to Rule 11.9(c)(1) and to make certain changes necessary to support the proposed Random Replenishment functionality. Specifically, proposed Rule 11.9(c)(1) would state that if the Display Quantity of an order is reduced to less than a round lot, the System will, in accordance with the User's instruction, replenish the Display Quantity from the Reserve Quantity using one of the replenishment instructions set forth in the Rule. The Exchange also proposes to state in Rule 11.9(c)(1) that if the remainder of an order is less than the replenishment amount, the System [9] will replenish and display the entire remainder of the order.

The Exchange currently requires Users to designate the original display quantity of an order, which is also the amount to which an order is replenished (unless the remainder of an order is smaller than the original displayed quantity) under the current replenishment functionality. The Exchange refers to this quantity as ''max floor'' in its specifications. The Exchange proposes to add a defined term of ''Max Floor'' to Rule 11.9(c)(1), which would be a mandatory value entered by a User that will determine the quantity of the order to be initially displayed by the System and will also be used to determine the replenishment amount under both replenishment options described below.

The Exchange currently offers one replenishment option, which uses the number of shares from reserve necessary to return the displayed quantity of an order to its original display amount. The Exchange proposes to retain this replenishment option and to define it as ''Fixed Replenishment.'' As proposed, Fixed Replenishment will apply to any order for which Random Replenishment has not been selected. Under the Fixed Replenishment option, the System will replenish the Display Quantity of an order to the Max Floor designated by the User. The Exchange also proposes to add a new replenishment option, Random Replenishment. As proposed, Random Replenishment is an instruction that a User may attach to an order with Reserve Quantity where replenishment quantities for the order are randomly determined by the System within a replenishment range established by the User. Further, as proposed, the User entering an order into the System subject to the Random Replenishment instruction must select a replenishment value and a Max Floor. The initial Display Quantity will be the Max Floor. The Display Quantity of an order when replenished will be determined by the System randomly selecting a round lot number of shares within a replenishment range that is between: (i) The Max Floor minus the replenishment value; and (ii) the Max Floor plus the replenishment value. The Exchange believes that the Random Replenishment is an optimization of current System functionality as it will help to achieve the general goal of Reserve Orders, which is to display less than the full interest that one represents in order to avoid moving the market. Random Replenishment will help Users to further disguise reserve interest by replenishing the Display Quantity of a Reserve Order to a variable amount so that other participants are less likely to detect that such order is in fact a Reserve Order with additional non-displayed size.

In addition to the changes set forth above, the Exchange proposes to modify Rule 11.9(e)(3) to state that the Max Floor set for an order can be modified through the use of a replace message rather than requiring a User to cancel and re-enter an order. The Exchange also proposes to modify Rule 11.12(a)(3) to make clear that a modification to the Max Floor of a Reserve Order will not cause such order to lose priority. The Exchange believes that this is appropriate because a modification to Max Floor of a resting Reserve Order will not change the handling or display of the order in any way until replenishment is caused due to the reduction of the Display Quantity to less than a round lot. When such replenishment occurs (based on the new Max Floor), the order will receive a new timestamp, and thus, will have a new priority.

Example 1(a)—Fixed Replenishment

Assume the NBBO is 10.00 × 10.01 and the Exchange has a displayed order to buy 100 shares at 9.99, a displayed order to sell 100 shares at 10.01, and no other equal or better priced liquidity.

- A User enters an order into the System to buy 10,000 shares at 10.00 with a Display Quantity (i.e., Max Floor) of 1,000 shares and a Reserve Quantity of 9,000 shares. Because Random Replenishment was not designated the order defaults to a Fixed Replenishment quantity of 1,000 shares.
- An inbound market order to sell 400 shares is entered into the System and executes against the Display Quantity of 1,000 shares, resulting in a remaining Display Quantity of 600 shares.
- Another market order to sell 600 shares is entered into the System and executes against the 600 displayed shares. The Display Quantity is then replenished by the System from the Reserve Quantity to the order's original displayed quantity of 1,000 shares, resulting in a remaining Reserve Quantity of 8,000 shares. Both the Display Quantity and the Reserve Quantity receive new timestamps upon replenishment.

Example 1(b)—Fixed Replenishment

Assume the NBBO is 10.00 × 10.01 and the Exchange has a displayed order to buy 100 shares at 9.99, a displayed order to sell 100 shares at 10.01, and no other equal or better priced liquidity.

- User A enters Order 1, a limit order to buy 6,000 shares at 10.00, the NBB, with a Display Quantity (i.e., Max Floor) of 1,000 shares and a Reserve Quantity of 5,000 shares. Because Random Replenishment was not designated the

[9] As defined in BYX Rule 1.5(aa), the System is the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.

order defaults to a Fixed Replenishment quantity of 1,000 shares.

• User B then enters Order 2, a display-eligible limit order to buy 600 shares at 10.00 with no Reserve Quantity.

• An inbound market order to sell 2,000 shares is entered into the System.

• The order to sell first executes against the Display Quantity of 1,000 shares of Order 1, then executes against the full 600 shares of Order 2, and then executes against 400 shares of the Reserve Quantity of Order 1 (i.e., the displayed quantities of Orders 1 and 2 execute in time priority, followed by the Reserve Quantity of Order 1).

• The Display Quantity of Order 1 is then replenished for 1,000 shares, leaving a Reserve Quantity of 3,600 shares. Both the Display Quantity and the Reserve Quantity receive new timestamps upon replenishment.

Example 2(a)—Random Replenishment

Assume the NBBO is 10.00 × 10.01 and the Exchange has a displayed order to buy 100 shares at 9.99, a displayed order to sell 100 shares at 10.01, and no other equal or better priced liquidity.

• A User enters an order into the System to buy 10,000 shares at 10.00 and designates such order for Random Replenishment with a Max Floor of 1,000 shares and a replenishment value of 400 shares.

• The initial Display Quantity of the order is 1,000 shares and the Reserve Quantity is 9,000 shares.

• An inbound market order to sell 950 shares is entered into the System and executes against the Display Quantity of the order (1,000 shares), leaving a 50 share Display Quantity. Because the remaining Display Quantity is less than a round lot, the System will replenish the Display Quantity.

• With a replenishment value of 400, subsequent replenishments will return the Display Quantity to a randomly selected round lot value between 600 shares (i.e., Max Floor minus the replenishment value) and 1,400 shares (i.e., Max Floor plus the replenishment value).

• Assume the System selects a Display Quantity of 1,200 shares. The System will refresh the order with 1,150 shares from the Reserve Quantity, thus generating a new Display Quantity of 1,200 shares to sell at 10.00, and a Reserve Quantity of 7,850 shares.

Example 2(b)—Random Replenishment

Assume the NBBO is 10.00 × 10.01 and the Exchange has a displayed order to buy 100 shares at 9.99, a displayed order to sell 100 shares at 10.01, and no other equal or better priced liquidity.

• A User enters an order into the System to buy 5,000 shares at 10.00 and designates such order for Random Replenishment with a Max Floor of 2,000 shares and a replenishment value of 1,000 shares.

• The initial Display Quantity of the order is 2,000 shares and the Reserve Quantity is 3,000 shares.

• An inbound market order to sell 1,800 shares is entered into the System and executes against the Display Quantity of the order (2,000 shares), leaving a 200 share Display Quantity.

• A second inbound market order to sell 700 shares is entered into the System and executes against the Display Quantity of the order (200 shares) and 500 shares of the Reserve Quantity of the order, leaving no Display Quantity and a Reserve Quantity of 2,500 shares.

• With a replenishment value of 1,000, subsequent replenishments would otherwise return the Display Quantity to a randomly selected round lot value between 1,000 shares (i.e., Max Floor minus the replenishment value) and 3,000 shares (i.e., Max Floor plus the replenishment value). However, in this example, because the Reserve Quantity is now 2,500 shares, the System would instead replenish the Display Quantity to a round lot value between 1,000 and 2,500 shares.

• Assume the System selects a Display Quantity of 2,000 shares, leaving a Reserve Quantity of 500 shares.

• An inbound market order to sell 2,050 shares is entered into the System and executes against the Display Quantity of the order (2,000 shares) and 50 shares of the Reserve Quantity of the order, leaving no Display Quantity and a Reserve Quantity of 450 shares. Because the remaining Reserve Quantity is less than the lower end of the replenishment range (i.e., 1,000 shares), the System will Display the entire remainder of the order, or 450 shares.

Minimum Quantity Functionality

The Exchange proposes to codify existing functionality already offered by the Exchange by introducing a definition of Minimum Quantity Order in Rule 11.9(c)(5). The Exchange notes that the main difference between a Minimum Quantity Order and an order with a TIF of FOK is that an order with a specified minimum quantity may be partially executed so long as the execution size is equal to or exceeds the quantity provided by the User whereas a FOK Order must be executed in full.

A Minimum Quantity Order, as proposed, is a limit order to buy or sell that will only execute if a specified minimum quantity of shares can be obtained. The Exchange proposes to state in Rule 11.9(c)(5) that orders with a specified minimum quantity will only execute against multiple, aggregated orders if such executions would occur simultaneously (rather than only executing against a single order that satisfies the applicable minimum quantity). Finally, the Exchange will only honor a specified minimum quantity on BATS Only Orders that are non-displayed or IOCs. The Exchange will disregard a minimum quantity on any other order.

The Exchange notes that a specified minimum quantity is only applicable to BATS Only Orders, which are not routed to other market centers, because of the practical difficulty the Exchange would face in trying to achieve a minimum quantity through its routing process. For instance, although most market centers have a feature similar to or identical to the Exchange's minimum quantity functionality, the Exchange cannot guarantee that all away market centers would always have such functionality. Minimum quantity is also inconsistent with routed orders because under most of the Exchange's routing options an order is split into multiple smaller orders that are routed simultaneously to away market centers. Similarly, the Exchange notes that a specified minimum quantity is only possible to apply to non-displayed orders or IOCs due to the Exchange's obligations to honor displayed quotations by executing such quotations against incoming orders.[10] By limiting the minimum quantity instruction to non-displayed orders or IOCs the Exchange avoids the display of a quotation that is not executable unless a specific condition is met.

Example 1—Minimum Quantity Order Executes

Assume the NBBO is 10.00 × 10.01 and the Exchange has a displayed order to buy 100 shares at 10.00 and a non-displayed order to buy 100 shares at 10.00. Assume that a User submits an IOC limit order to sell 500 shares at 10.00 with a minimum quantity of 200 shares.

• The order to sell 500 shares would receive a partial execution of 200 shares against the resting displayed and non-displayed orders at 10.00. The remaining 300 shares would be cancelled back to the User.

[10] See, e.g., Rule 602 of Regulation NMS (the "Firm Quote Rule"). 17 CFR 240.602.

Example 2—Minimum Quantity Order Does Not Execute

Assume the NBBO is 10.00 × 10.01 and the Exchange has a displayed order to buy 100 shares at 10.00 and a non-displayed order to buy 100 shares at 10.00. Assume that a User submits an IOC limit order to sell 500 shares at 10.00 with a minimum quantity of 300 shares.

• The order to sell would be cancelled back to the User because the required execution of at least 300 shares could not be satisfied upon receipt by the Exchange.

Stop and Stop Limit Order Functionality

The Exchange proposes to adopt new orders that trigger based on trades occurring on the Exchange or reported on other marketplaces. Specifically, the Exchange proposes to adopt Stop Orders and Stop Limit Orders. Stop Orders and Stop Limit Orders are not executable unless and until their stop price is triggered. As proposed, a Stop Order is an order that becomes a BATS market order [11] when the stop price is elected. In contrast, a Stop Limit Order is an order that becomes a limit order when the stop price is elected. The triggering events for Stop Orders and Stop Limit Orders will be the same. A Stop Order or Stop Limit Order to buy will be elected when the consolidated last sale in the security occurs at, or above, the specified stop price. A Stop Order or Stop Limit Order to sell will be elected when the consolidated last sale in the security occurs at, or below, the specified stop price.

Example 1—Stop Order Is Triggered

Assume the NBBO is 7.80 × 8.00. Assume that a User submits a Stop Order to buy 500 shares with a stop price of 8.05.

• Assume the NBBO shifts gradually upwards to 8.00 by 8.05. An execution reported by another exchange at 8.05 will trigger the stop price of the Stop Order, which will convert into a BATS market order to buy.

Example 2—Stop Limit Order Is Triggered

Assume the NBBO is 7.84 × 7.85. Assume that a User submits a Stop Limit Order to buy 500 shares at 8.04 with stop limit price of 8.05.

• Assume the NBBO shifts gradually upwards to 8.03 by 8.05. An execution reported by another exchange at 8.05 will trigger the stop price of the Stop Limit Order, which will convert into a limit order to buy at 8.04.

[11] See Rule 11.9(a)(2).

In addition to the changes set forth above, the Exchange proposes to modify Rule 11.9(e)(3) to state that the stop price of an order can be modified through the use of a replace message rather than requiring a User to cancel and re-enter an order. The Exchange also proposes to modify Rule 11.12(a)(3) to make clear that a modification to the stop price of a Stop Order or Stop Limit Order will not cause such an order to lose priority. The Exchange believes that this is appropriate because a modification to the stop price of a resting order will not change the handling of the order in any way other than to trigger the order based on a different subsequent trade than the order otherwise would have.

Additional Changes

The Exchange proposes to correct three incorrect internal cross-references in Rule 11.9(c)(7)(B), each of which points to paragraph (c)(6)(A) but is intended to refer to paragraph (c)(7)(A). The Exchange proposes to instead simply reference paragraph (A) above, which the Exchange believes is sufficient detail when read in context.

The Exchange also proposes to eliminate all references in Rule 11.18 to individual stock trading pauses issued by a primary listing market and related definitions, which are contained in Rule 11.18(e), 11.18(e)(6) and 11.18(f). The stock trading pauses described in such provisions have been fully phased out as securities have become subject to the Limit Up-Limit Down Plan. The Plan is already operational with respect to all securities, and thus, the Exchange believes that all references to individual stock trading pauses should be removed. This change will also serve to eliminate certain duplicative references that have occurred through amendments to Rule 11.18, including amendments related to the operation of the Limit Up-Limit Down Plan as well as other amendments. The Exchange also proposes various other corrections to the numbering of Rule 11.18 for consistency with other portions of its rules. The Exchange also proposes to eliminate a reference to the operational date of the Limit Up-Limit Down Plan now that it is, in fact, already operational.

In reviewing Rule 11.18 in connection with the above-described corrections, the Exchange determined to also add additional detail to the routing description of Rule 11.18 to reflect the existing functionality of the System. In particular, the Exchange proposes to affirmatively state in Rule 11.18 that the System will not route buy (sell) interest at a price above (below) the Upper (Lower) Price Band.[12] Because executions cannot occur outside of applicable price bands anyway, the Exchange believes it is inefficient to route orders outside of price bands. For example, assume that the Lower Price Band is $9.50 and the Upper Price Band is $10.50. Further assume the NBBO is $10.00 by $11.00, and thus, that the national best offer of $11.00 is not executable.[13] If the Exchange received a routable limit order to buy at $11.00 such order would not be routed to the available quotation(s) at $11.00 because such quotation could not be executed. The Exchange notes that the proposed rule text reflecting that the Exchange will not route if there are not executable quotations available is consistent with the rules of several other market centers, including EDGA and EDGX.[14]

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act'') [15] and further the objectives of Section 6(b)(5) of the Act [16] because they are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1) [17] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets.

The proposed rule changes to add functionality are generally intended to add certain system functionality currently offered by EDGA and/or EDGX in order to provide a consistent technology offering for the BGM Affiliated Exchanges. A consistent technology offering, in turn, will simplify the technology implementation, changes and

[12] The Upper Price Band and Lower Price Band are defined terms in the Limit Up-Limit Down Plan.

[13] The Exchange notes that this condition, with the national best bid and/or national best offer outside of applicable price bands, is defined in the Plan as Straddle State (as long as the security is not in a Limit State). The Exchange also notes that pursuant to the Plan if a security is in a Straddle State and trading in that stock deviates from normal trading characteristics, the applicable listing exchange may, but is not required to, declare a trading pause for that security.

[14] *See, e.g.,* EDGA Rule 11.9(b)(1)(B)(i); EDGX Rule 11.9(b)(1)(B)(i); NASDAQ Rule 4120(a)(12)(E)(4); NYSE Arca Rule 7.11(a)(7).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78k–1(a)(1).

maintenance by Users of the Exchange that are also participants on BYX, EDGA and/or EDGX. The proposed rule changes would also provide Users with access to functionality that is generally available on markets other than the BGM Affiliated Exchanges and may result in the efficient execution of such orders and will provide additional flexibility as well as increased functionality to the Exchange's System and its Users. The Exchange also believes that the changes to correct or provide additional specificity regarding the functionality of the System would promote just and equitable principles of trade and remove impediments to a free and open market by providing greater transparency concerning the operation of the System. The Exchange also believes that the proposed amendments will contribute to the protection of investors and the public interest by making the Exchange's rules easier to understand.

As explained elsewhere in this proposal, the proposed FOK functionality is similar to existing IOC and Minimum Quantity functionality and is available on numerous other market centers, including EDGA and EDGX. Similarly, the proposed Minimum Quantity functionality is intended to codify functionality that has been available on the Exchange since its inception and is available on numerous other market centers, including the equity options trading platform operated by BZX, known as BATS Options. Finally, the Stop Orders and Stop Limit Orders that the Exchange proposes to add are available on numerous other market centers, including EDGA and EDGX. Thus, the Exchange believes that each of these proposed functionality additions have already been accepted as consistent with the Act and offered by various market centers for many years. Also, to the extent any of the proposals differ from functionality available on other market centers as described elsewhere in this proposal, the Exchange does not believe that any such differences present any additional policy issues to be considered under the Act. The Exchange's addition of such functionality is consistent with the Act for the reasons set forth above.

The Exchange believes that the additional detail with respect to the operation of Reserve Orders and restructuring to move certain descriptions related to Reserve Order handling from Rule 11.12 to Rule 11.9 are consistent with the Act for the reasons set forth above related to transparency of the operation of the System. The Exchange believes that the addition of the Random Replenishment option is consistent with the Act as it will help to achieve the general goal of Reserve Orders, which is to display less than the full interest that one represents in order to avoid moving the market. Random Replenishment will help Users to further disguise reserve interest by replenishing the Display Quantity of a Reserve Order to a variable amount so that other participants are less likely to detect that such order is in fact a Reserve Order with additional non-displayed size. Given the consistency of this functionality with the overall intent of Reserve Orders, and the widespread and longstanding offering of Reserve Orders by most market centers, the Exchange believes that the Random Replenishment option is consistent with the Act.

The Exchange believes that the proposed change with respect to the fact that the Exchange does not route orders outside of price bands established by the Limit Up-Limit Down Plan is consistent with the Act in that it reflects the current operation of the System, is consistent with the rules of other Exchanges that have adopted such functionality consistent with the Act, and because routing such orders would be inefficient, even if they would return to the Exchange unexecuted. As described above, the Exchange believes that the other proposed changes to its rulebook to correct typographical changes and add additional detail to the way that certain functionality currently operates provides further clarification to Members, Users, and the investing public regarding the operation of the Exchange's System.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange reiterates that the proposed rule change is being proposed in the context of the technology integration of the BGM Affiliated Exchanges. Thus, the Exchange believes this proposed rule change is necessary to permit fair competition among national securities exchanges. In addition, the Exchange believes the proposed rule change will benefit Exchange participants in that it is one of several changes necessary to achieve a consistent technology offering by the BGM Affiliated Exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and Rule 19b–4(f)(6) thereunder.[19]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [20] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [21] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay, noting that doing so will allow the Exchange to immediately clarify its rules with respect to existing functionality already offered by the Exchange; correct typographical errors in the Exchange's rules; and offer certain functionality that is already available on other market centers, which will allow the Exchange to remain competitive with such other market centers. In addition, the Exchange states that, to the extent a proposed change optimizes existing functionality, the Exchange does not believe that there is a reason to delay the availability of such optimization. Furthermore, the Exchange states that waiver of the operative delay will allow the Exchange to continue to strive towards a complete technology integration of the BGM Affiliated Exchanges, with gradual roll-outs of new functionality to ensure stability of the System. The Commission believes that waiving the 30-day

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give 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, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BYX–2014–010 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–BYX–2014–010. 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–BYX–2014–010 and should be submitted on or before August 15, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–17514 Filed 7–24–14; 8:45 am]

BILLING CODE 8011–01–P

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 8807]

Culturally Significant Objects Imported for Exhibition Determinations: ''Neo-Impressionism and the Dream of Realities: Painting, Poetry, Music'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Neo-Impressionism and the Dream of Realities: Painting, Poetry, Music,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Phillips Collection, Washington, DC, from on or about September 27, 2014, until on or about January 11, 2015, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: July 16, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–17570 Filed 7–24–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Intelligent Transportation Systems Program Advisory Committee; Notice of Meeting

AGENCY: ITS Joint Program Office, Office of the Assistant Secretary for Research and Technology, U.S. Department of Transportation.

ACTION: Notice.

The Intelligent Transportation Systems (ITS) Program Advisory Committee (ITSPAC) will hold a meeting on August 13, 2014, from 8:00 a.m. to 5:00 p.m. (EDT) at the Key Bridge Marriott Hotel, 1401 Lee Highway, Arlington, VA 22209.

The ITSPAC, established under Section 5305 of Public Law 109–59, Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, August 10, 2005, and re-established under Section 53003 of Public Law 112–141, Moving Ahead for Progress in the 21st Century, July 6, 2012, was created to advise the Secretary of Transportation on all matters relating to the study, development, and implementation of intelligent transportation systems. Through its sponsor, the ITS Joint Program Office (JPO), the ITSPAC makes recommendations to the Secretary regarding ITS Program needs, objectives, plans, approaches, content, and progress.

The following is a summary of the meeting tentative agenda: (1) Call to Order and Roll Call, (2) Opening Remarks, (3) Committee Member Introductions, (4) ITS JPO Briefing and Group Discussion, (5) Committee Topics of Interest Discussion, (6) Committee Organization Discussion, and (7) Summary and Next Steps.

The meeting will be open to the public, but limited space will be available on a first-come, first-served basis. Members of the public who wish to present oral statements at the meeting must request approval from Mr. Stephen Glasscock, the Committee Designated

Federal Official, at (202) 366–9126, not later than August 6, 2014.

Questions about the agenda or written comments may be submitted by U.S. Mail to: U.S. Department of Transportation, Office of the Assistant Secretary for Research and Technology, ITS Joint Program Office, Attention: Stephen Glasscock, 1200 New Jersey Avenue SE., HOIT, Washington, DC 20590 or faxed to (202) 493–2027. The ITS JPO requests that written comments be submitted not later than August 6, 2014.

Notice of this meeting is provided in accordance with the Federal Advisory Committee Act and the General Services Administration regulations (41 CFR part 102–3) covering management of Federal advisory committees.

Issued in Washington, DC, on the 21st day of July 2014.

John Augustine,

Managing Director, ITS Joint Program Office.

[FR Doc. 2014–17455 Filed 7–24–14; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[4910–RY]

Notice of Final Federal Agency Actions on Grand Parkway (State Highway 99), Segments H and I–1, in Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, Grand Parkway (State Highway 99) Segments H and I–1, from US 59 (N)/I–69 to I–10 (E) in Montgomery, Harris, Liberty, and Chambers Counties, Texas. Those actions grant licenses, permits, and 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). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before December 22, 2014. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Punske, P.E., District Engineer, District B (South), Federal Highway Administration, 300 East 8th Street, Room 826, Austin, Texas 78701; telephone: (512) 536–5960; email: *gregory.punske@dot.gov.* The FHWA Texas Division Office's normal business hours are 7:30 a.m. to 4:30 p.m. (central time) Monday through Friday. You may also contact Carlos Swonke, P.G., Environmental Affairs Division, Texas Department of Transportation, 118 E. Riverside Drive, Austin, Texas 78704; telephone: (512) 416–2734; email: *carlos.swonke@txdot.gov.* The Texas Department of Transportation (TxDOT) normal business hours are 8 a.m. to 5 p.m. (central time) Monday through Friday.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Texas: Grand Parkway (State Highway 99) Segments H and I–1 from US 59 (N)/I–69 to I–10 (E) in Montgomery, Harris, Liberty, and Chambers Counties. The project will be a 37.4 mile- long, four-lane controlled access toll road. The project will begin at US 59 (N)/I–69 in Montgomery County and then proceeds east/southeast through Harris and Liberty Counties, ending at I–10 (E) in Chambers County. There are proposed grade separated interchanges with access ramps at nine locations. Overpasses with no access to the cross-streets are proposed at eight locations. Preliminary design proposes continuous frontage roads where Segment H parallels FM 1485. This section will be reconstructed in a frontage road configuration for overall improved traffic operations. The purpose of the project is to efficiently link the suburban communities and major roadways, enhance mobility and safety, and respond to economic growth.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on April 8, 2014, in the FHWA Record of Decision (ROD) issued on June 24, 2014, and in other documents in the FHWA administrative record. The FEIS, ROD, and other documents in the FHWA administrative record file are available by contacting FHWA or TxDOT at the addresses provided above. The FHWA FEIS and ROD can be viewed and downloaded from the Grand Parkway Association Web site at *http://www.grandpky.com/segments/h/.*

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. 4321–4335].

2. Air: Clean Air Act [42 U.S.C. 7401–7671(q)].

3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Uniform Relocation and Real Property Acquisition Policies Act of 1970 [42 U.S.C. 4601–4655]; Coastal Zone Management Act of 1972.

4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544]; Migratory Bird Treaty Act [16 U.S.C. 703–712]; Bald and Golden Eagle Protection Act of 1940; Magnuson-Stevens Act of 1996.

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: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Section 504 of the Americans with Disability Act; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. Wetlands and Water Resources: Clean Water Act[33 U.S.C. 1251–1342 (Sections 401, 402, and 404)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Safe Drinking Water Act of 1996 [42 U.S.C. 300(f)–300(j)(6)].

8. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 13112 on Invasive Species; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 13166 Improving Access to Services for Persons with Limited English Proficiency (LEP).

(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).

Dated: July 15, 2014.

Gregory S. Punske,

District Engineer.

[FR Doc. 2014–17410 Filed 7–24–14; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Meeting Notice (Closed)—Marine Transportation System National Advisory Council

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of closed advisory council meeting.

SUMMARY: The U.S. Department of Transportation (DOT) and Maritime Administration (MARAD) announce that the Marine Transportation System National Advisory Council (MTSNAC) will hold a closed door meeting on August 14, 2014. After a review of all comments received from the interested public during its two national maritime symposiums, MARAD is now planning to provide the council a compilation of select concepts for further consideration. In January 2014, MARAD held a three-day National Maritime Strategy Symposium to discuss issues facing U.S.-flag vessels. The purpose of this initial public meeting was to generate ideas to improve, strengthen, and sustain the cargo opportunities and sealift capacity of the U.S.-flagged fleet engaged in international commercial trade. A second symposium was held in May which focused on domestic shipping, shipbuilding, ports and the needs of maritime stakeholders on the inland waterways, Great Lakes, gulf and coastwise trade. The August 14 meeting will be held to obtain the opinions and views of council members with respect to the value and impact of certain strategy options gathered through MARAD outreach. The input MARAD expects to receive from the council will be part of its on-going deliberations as it prepares a long term maritime strategy.

DATES: The MTSNAC closed meeting will take place August 14, 2014, from 2:00 p.m. to 4:00 p.m. via teleconference.

FOR FURTHER INFORMATION CONTACT: Richard Lolich, (202) 366–0704; Maritime Administration, MAR–540, Room W21–310, 1200 New Jersey Ave. SE., Washington, DC 20590–0001; *richard.lolich@dot.gov.*

SUPPLEMENTARY INFORMATION: The Marine Transportation System National Advisory Council (MTSNAC) is a chartered, non-federal body that responds to requests from the Maritime Administrator to identify and seek solutions, provide advice and make recommendations on certain maritime matters. The MTSNAC is comprised of 29 leaders from commercial transportation firms, port and water stakeholders, labor, and Federal, state and local public entities. The Council provides an industry stakeholder and academic prospective to Departmental policies that affect efficient and environmentally friendly waterborne freight and passenger movements.

This meeting notice is being given pursuant to section 10 of the Federal Advisory Committee Act of 1972. A determination, as required by section 10(d) of the Federal Advisory Committee Act, has been made that this meeting may be closed to the public in accordance with subsection (c)(3) of section 552b, title 5, the Government in Sunshine Act of 1976. In this instance, the (c)(3) exemption applies because matters to be considered by the advisory committee concern pre-decisional and deliberative internal information. The policy purposes for withholding this sort of information from the public are 1. To encourage open, frank discussions on matters of policy between subordinates and superiors; 2. To protect against premature disclosure of proposed policies before they are actually adopted; and 3. To protect against public confusion that might result from disclosure of reasons and rationales that are not in fact ultimately relied on by MARAD. Accordingly, the meeting will not be open to the public.

Authority: 46 U.S.C. 51312; 5 U.S.C. app. 552b; 41 CFR parts 102–3.140 through 102–3.165)

* * * * *

Dated: July 22, 2014.

By Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2014–17611 Filed 7–24–14; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2014–0039]

Reports, Forms, and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comment. A **Federal Register** Notice with a 60-day comment period was published on April 21, 2014 (76 FR 7897–7898).

DATES: Comments must be submitted no later than August 25, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Laurie Flaherty, Coordinator, National 911 Program, U.S. Department of Transportation, Office of Emergency Medical Services, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., NTI–140, W44–322, Washington, DC 20590, (202) 366–2705 or via email at *laurie.flaherty@dot.gov.*

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: National 9–1–1 Profile Database as part of the National 9–1–1 Program.

OMB Control Number: 201106–2127–007.

Type of Request: Renewal of information collection Requirement.

Abstract: NHTSA is proposing to continue to collect and aggregate information from state level reporting entities that can be used to measure the progress of 9–1–1 authorities across the country in enhancing their existing operations and migrating to more advanced—Internet-Protocol-enabled emergency networks.

The data will be maintained in a ''National 9–1–1 Profile Database.'' One of the objectives of the National 9–1–1 Program is to develop, collect, and disseminate information concerning practices, procedures, and technology used in the implementation of E9–1–1 services and to support 9–1–1 Public Safety Answering Points (PSAPs) and related state and local public safety agencies for 9–1–1 deployment and operations. The National 9–1–1 profile database can be used to follow the progress of 9–1–1 authorities in enhancing their existing systems and implementing next-generation networks for more advanced systems.

The goal of the data collection process is to support a national 9–1–1 profile that will be used to help accurately measure and depict the current status and planned capabilities of 9–1–1 systems across the United States. Evaluations, based upon the data collected, will help draw attention to key roadblocks and solutions in the deployment process and to target possible future activities and resources consistent with the goals of the program. The information in aggregated form will be available to state and local stakeholders in the public safety community.

Affected Public: Under this proposed effort, NHTSA would specifically

request reporting entities to voluntarily collect and annually report the data described above utilizing the described Web-based data collection tool. Reporting entities are state level 9–1–1 program officials, and the data reported will reflect state-level aggregated data. Where a state statute has not established a state-level 9–1–1 program, the authorized entity is the state E9–1–1 Coordinator designated under 47 U.S.C. 942(b)(3)(A)(ii).

The total number of respondents is identified at fifty-six (56), including the fifty states and the six U.S. Territories of Guam, U.S. Minor Outlying Islands, American Samoa, Mariana Islands, U.S. Virgin Islands, and Puerto Rico.

Estimated Number of Respondents: The maximum number of respondents is 56.

Estimated Number of Responses: NHTSA estimates 40–45 responses annually.

Estimated Total Annual Burden Hours: NHTSA estimates that the time required to annually report the data described utilizing the Web-based tool will be three hours (2 hours of preparation, 1 hour of entry to Web site) per reporting entity, for a total of 168 hours for all entities.

The respondents would not incur any reporting costs from the information collection beyond the time it takes to gather the information, prepare it for reporting and then populate the Web-based data collection tool. The respondents also would not incur any recordkeeping burden or recordkeeping costs from the information collection.

Send comments within 30 days, to the U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140. Telephone: 1–800–647–5527.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication.

Frequency of Collection: Data will be collected annually.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC, on July 22, 2014.

Jeffrey P. Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2014–17532 Filed 7–24–14; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35837]

Patrick D. Broe, OmniTRAX, Inc., and OmniTRAX Holdings, LLC—Continuance in Control Exemption—Brownsville & Rio Grande International Railway, LLC

Patrick D. Broe (Mr. Broe), OmniTRAX, Inc. (OmniTRAX), and OmniTRAX Holdings, LLC (Omni Holdings) (collectively, Applicants), have filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) to continue in control of Brownsville & Rio Grande International Railway, LLC (BRGIR), a noncarrier, upon BRGIR's becoming a common carrier.[1]

This transaction is related to a concurrently filed verified notice of exemption in *Brownsville & Rio Grande International Railway, LLC—Change In Operator Exemption Including Interchange Commitment—Brownsville & Rio Grande International Railroad,* Docket No. FD 35836, in which BRGIR seeks an exemption under 49 CFR 1150.31 to change operators from Brownsville & Rio Grande International Railroad (BRG) to BRGIR over certain rail lines currently operated by BRG in and around the seaport facilities of the Brownsville Navigation District of Cameron County, Tex., (the District) at the Port of Brownsville, Tex.[2]

The earliest this transaction can be consummated is August 10, 2014, the effective date of the exemption (30 days after the verified notice was filed). Applicants indicate that they intend to consummate the proposed transaction on or about August 11, 2014.

Applicants represent that: (1) BRGIR will not connect with any of the other railroads controlled by Omni Holdings or Mr. Broe, (2) the continuance in control is not part of a series of anticipated transactions that would connect some or all of those railroads; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke would not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than August 1, 2014 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35837, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading

[1] The verified notice of exemption indicates that Mr. Broe is a noncarrier who directly controls noncarrier OmniTRAX, which directly controls Omni Holdings, a holding company that controls 11 Class III carriers. Mr. Broe also controls five other Class III carriers indirectly through other entities.

[2] Specifically, under the transaction contemplated in Docket No. FD 35836, (1) BRGIR will become the operator of 10.5 miles of rail line and 39.5 miles of ancillary track (collectively, the District Trackage) in and around the Port of Brownsville, including Palo Alto Yard; (2) BRG will assign to BRGIR its leasehold interests in a rail line owned by Union Pacific Railroad Company (UP) known as the ''Port Lead'' between milepost 2.20 near Arthur Street in Brownsville, Tex., and milepost 7.92 at a point of connection with the District Trackage at the western end of the Port of Brownsville; and (3) BRGIR will assume by assignment BRG's overhead trackage rights over UP's ''New Port Lead'' between milepost 7.49 and milepost 9.47, enabling BRGIR to access Palo Alto Yard.

must be served on Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV*.

Decided: July 21, 2014.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2014–17526 Filed 7–24–14; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35836]

Brownsville & Rio Grande International Railway, LLC—Change In Operator Exemption Including Interchange Commitment—Brownsville & Rio Grande International Railroad

Brownsville & Rio Grande International Railway, LLC (BRGIR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to change operators from Brownsville & Rio Grande International Railroad (BRG) to BRGIR over certain rail lines currently operated by BRG in and around the seaport facilities of the Brownsville Navigation District of Cameron County, Tex., (the District) [1] at the Port of Brownsville, Tex. Specifically: (1) BRGIR will become the operator of 10.5 miles of rail line and 39.5 miles of ancillary track (collectively, the District Trackage) in and around the Port of Brownsville, including Palo Alto Yard; (2) BRG will assign to BRGIR its leasehold interests in a rail line owned by Union Pacific Railroad Company (UP) known as the ''Port Lead'' between milepost 2.20 near Arthur Street in Brownsville, Tex., and milepost 7.92 at a point of connection with the District Trackage at the western end of the Port of Brownsville; and (3) BRGIR will assume by assignment BRG's overhead trackage rights over UP's ''New Port Lead'' between milepost 7.49 and milepost 9.47, enabling BRGIR to access Palo Alto Yard. This change in operators is exempt under 49 CFR 1150.31(3).

BRGIR states that the existing lease that BRG will assign to BRGIR, governing operation of the Port Lead, contains an interchange commitment in favor of UP that applies to (and is limited to) traffic originating and terminating on the Port Lead. As required under 49 CFR 1150.33(h)(1), BRGIR has provided additional information concerning the interchange commitment.

BRGIR certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier. However, because its projected annual revenues will exceed $5 million, BRGIR certifies that, pursuant to 49 CFR 1150.32(e), it provided notice on June 12, 2014, to employees on the affected lines and that notice was not served on the national offices of any rail labor union because no employees on the affected lines are represented by any labor union. Additionally, under 49 CFR 1150.32(b), a change in operators requires that notice be given to shippers. BRGIR certifies that notice has been given to all shippers on the affected lines.

The earliest this transaction can be consummated is August 11, 2014. BRGIR indicates that consummation is expected to occur on or after that date.

This transaction is related to a concurrently filed verified notice of exemption in *Patrick D. Broe—Continuance in Control Exemption—Brownsville & Rio Grande International Railway,* Docket No. FD 35837, in which Patrick D. Broe, OmniTRAX, and OmniTRAX Holdings, LLC seek the Board's approval under 49 CFR 1180.2(d)(2) to continue in control of BRGIR upon BRGIR's becoming a common carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than August 4, 2014 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35836, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: July 21, 2014.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Raina. S. White,

Clearance Clerk.

[FR Doc. 2014–17527 Filed 7–24–14; 8:45 am]

BILLING CODE 4915–01–P

[1] According to the verified notice of exemption, the District is a political subdivision of the State of Texas that manages operations within the Port of Brownsville and owns railroad trackage within the port terminal area as well as within Palo Alto Yard. BRG obtained authority to operate the District Trackage in 1984. *See Brownsville & Rio Grande Int'l R.R.—Operation—Port of Brownsville, Brownsville, Tex.,* FD 30255 (ICC served Sept. 8, 1984). BRGIR will operate the District Trackage under a new Master Franchise Agreement (MFA) between the District and BRGIR's corporate affiliate, OmniTRAX, Inc. (OmniTRAX). When BRGIR is ready to assume railroad operations in place of BRG, OmniTRAX will convey the railroad operating rights under the MFA to BRGIR. BRGIR has submitted to the Board an unredacted copy of the MFA. *See Anthony Macrie—Continuance in Control Exemption—N.J. Seashore Lines,* FD 35296 (STB served Aug. 31, 2010).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 22, 2014.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before August 25, 2014 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0018.

Type of Review: Extension without change of a currently approved collection.

Title: Report of Cash Payment Over $10,000 Received in a Trade or Business.

Form: 8300.

Abstract: Anyone in a trade or business who, in the course of such trade or business, receives more than $10,000 in cash or foreign currency in one or more related transactions must report it to FinCEN and provide a statement to the payor. Any transaction which must be reported under Title 31 on FinCEN Form 112 (BCTR) is exempted from reporting the same transaction on Form 8300. The USA Patriot Act of 2001 (Pub. L. 107–56) authorized the Financial Crimes Enforcement Network to collect the information reported on Form 8300.

Affected Public: Private Sector: Businesses or other for-profit organizations.

Estimated Annual Burden Hours: 114,000.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2014–17523 Filed 7–24–14; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Open Meeting of the Federal Advisory Committee on Insurance

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces that the Department of the Treasury's Federal Advisory Committee on Insurance will convene a meeting on Thursday, August 7, 2014, in the Cash Room, 1500 Pennsylvania Avenue NW., Washington, DC 20220, from 2:00 to 5:00 p.m. Eastern Time. The meeting is open to the public, and the site is accessible to individuals with disabilities.

DATES: The meeting will be held on Thursday, August 7, 2014, from 2:00 to 5:00 p.m. Eastern Time.

ADDRESSES: The Federal Advisory Committee on Insurance meeting will be held in the Cash Room, 1500 Pennsylvania Avenue NW., Washington, DC 20220. The meeting will be open to the public. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting must either:

1. Register online. Attendees may visit *http://www.cvent.com/d/74q411?RefID=FACI+General+Registration&ct=6128d144-9ad5-45f5-910c-c7b44560aae0* and fill out a secure online registration form. A valid email address will be required to complete online registration. (*Note:* Online registration will close at 5:00 p.m. Eastern Time on Sunday, August 3, 2014.)

2. Contact the Federal Insurance Office, at (202) 622–3277, by 5:00 p.m. Eastern Time on Wednesday, August 6, 2014, to register for the meeting.

FOR FURTHER INFORMATION CONTACT: Michael J. Newman, Senior Policy Advisor to the Federal Insurance Office, Room 1317, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, at (202) 622–3277 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. II, 10(a)(2), through implementing regulations at 41 CFR 102–3.150.

Public Comment: Members of the public wishing to comment on the business of the Federal Advisory Committee on Insurance are invited to submit written statements by any of the following methods:

Electronic Statements

- Send electronic comments to *faci@treasury.gov*.

Paper Statements

- Send paper statements in triplicate to the Federal Advisory Committee on Insurance, c/o Michael J. Newman, Room 1317, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

The Department of the Treasury will post all statements on its Web site *http://www.treasury.gov/initiatives/fio/Pages/faci.aspx* without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. The Department of the Treasury will also make such statements available for public inspection and copying in the Department of the Treasury's Library, 1500 Pennsylvania Avenue NW., Washington, DC 20220, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–0990. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Tentative Agenda/Topics for Discussion: This is a periodic meeting of the Federal Advisory Committee on Insurance. In this meeting, the Federal Advisory Committee on Insurance will discuss its renewed charter, bylaws, identify and form subcommittees, and discuss pending issues of concern to members, including matters of regulatory modernization and international standard-setting.

Michael T. McRaith,

Director, Federal Insurance Office.

[FR Doc. 2014–17552 Filed 7–24–14; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning information collection related to Private Foundation Disclosure Rules.

DATES: Written comments should be received on or before September 23, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for copies of regulations should be directed to Sara Covington, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Private Foundation Disclosure Rules.

OMB Number: 1545–1655.

Regulation Project Number: T.D. 8861.

Abstract: The regulations relate to the public disclosure requirements described in section 6104(d) of the Internal Revenue Code. These final regulations implement changes made by the Tax and Trade Relief Extension Act of 1998, which extended to private foundations the same rules regarding public disclosure of annual information

returns that apply to other tax-exempt organizations. These final regulations provide guidance for private foundations required to make copies of applications for recognition of exemption and annual information return available for public inspection and to comply with requests for copies of those documents.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 65,065.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 32,596.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 14, 2014.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 2014–17593 Filed 7–24–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning information collection requirements related to limitations on passive activity losses and credits-treatment of self-charged items of income and expense.

DATES: Written comments should be received on or before September 23, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to, R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the regulations should be directed to Sara Covington at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Sara.L.Covington@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Limitation on Passive Activity Losses and Credits-Treatment of Self-Charged Items of Income and Expense.

OMB Number: 1545–1244.

Regulation Project Number: (T.D. 9013).

Abstract: Section 1.469–7(f)(1) of this regulation permits entities to elect to avoid application of the regulation in the event the pass-through entity chooses to not have the income from leading transactions with owners of interests in the entity re-characterized as passive activity gross income. The IRS will use this information to determine whether the entity has made a proper timely election and to determine that taxpayers are complying with the election in the taxable year of the election and subsequent taxable years.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Total Annual Burden Hours: 150.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 14, 2014.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 2014–17596 Filed 7–24–14; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

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Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 35

Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities; Proposed Rules

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM14–14–000]

Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations governing market-based rates for public utilities pursuant to the Federal Power Act (FPA). The Commission is proposing to revise its current standards for market-based rates for sales of electric energy, capacity, and ancillary services to streamline certain aspects of its filing requirements to reduce the administrative burden on applicants and the Commission. The Commission seeks comment on the proposed revisions. In addition, the Commission provides some clarification regarding the standards for obtaining and retaining market-based rate authority.

DATES: Comments are due September 23, 2014.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through *http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

Joseph Cholka (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, 202–502–8876.

Carol Johnson (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, 202–502–8521.

SUPPLEMENTARY INFORMATION:

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I. Introduction

1. Pursuant to sections 205 and 206 of the Federal Power Act (FPA),[1] the Commission is proposing to amend its regulations to revise Subpart H to Part 35 of Title 18 of the Code of Federal Regulations (CFR), which governs market-based rate authorizations for wholesale sales of electric energy, capacity, and ancillary services by public utilities.

II. Background

2. In 1988, the Commission began considering proposals for market-based pricing of wholesale power sales. The Commission acted on market-based rate proposals filed by various wholesale suppliers on a case-by-case basis. Over the years, the Commission developed a four-prong analysis to assess whether a seller should be granted market-based rate authority: (1) Whether the seller and its affiliates lack, or have adequately mitigated, market power in generation; (2) whether the seller and its affiliates lack, or have adequately mitigated, market power in transmission; (3) whether the seller or its affiliates can erect other barriers to entry; and (4) whether there is evidence involving the seller or its affiliates that relates to affiliate abuse or reciprocal dealing.

3. In April 2004, the Commission initiated a rulemaking proceeding to consider the adequacy of its market-based rate analysis and whether and how it should be modified to assure that prices for electric power being sold under market-based rates are just and reasonable under the FPA.[2] At that time, the Commission noted that much had changed in the industry since its analysis was first developed and posed a number of questions that would be explored through a series of technical conferences. Following the technical conferences, the Commission issued a notice of proposed rulemaking that led to the issuance in 2007 of Order No. 697, which clarified and codified the Commission's market-based rate policy.[3]

4. In Order No. 697, the Commission adopted two indicative screens for assessing horizontal market power: The pivotal supplier screen and the wholesale market share screen (with a 20 percent threshold), each of which serves as a cross check on the other to determine whether sellers may have market power and should be further examined.[4] The Commission stated that passage of both indicative screens establishes a rebuttable presumption that the seller does not possess horizontal market power. Sellers that fail either indicative screen are rebuttably presumed to have market power and are given the opportunity to present evidence through a delivered price test (DPT) analysis demonstrating that, despite a screen failure, they do not have market power.[5] The Commission uses a ''snapshot in time'' approach based on historical data for both the indicative screens and the DPT analysis.[6]

5. With respect to the horizontal market power analysis, in traditional markets (outside regional transmission organization/independent system operator (RTO/ISO) markets),[7] the default relevant geographic market for purposes of the indicative screens is first, the balancing authority area(s) where the seller is physically located, and second, the markets directly interconnected to the seller's balancing authority area (first-tier balancing authority areas).[8] Generally, sellers that are located in and are members of the RTO may consider the geographic region under the control of the RTO as the default relevant geographic market for purposes of the indicative screens.[9]

6. With respect to the vertical market power analysis, in cases where a public utility or any of its affiliates owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved Open Access Transmission Tariff (OATT) on file, or that the seller or its applicable affiliate has received waiver of the OATT requirement, before granting a seller market-based rate authorization.[10] The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.[11] As such, the Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, storage or distribution facilities; sites for generation capacity development; and physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production).[12] In Order No. 697–C, the Commission revised the change in status reporting requirement in § 35.42 of the Commission's regulations to require market-based rate sellers to report the acquisition of control of sites for new generation capacity development on a quarterly basis instead of within 30 days of the acquisition.[13] The Commission adopted a rebuttable presumption that the ownership or control of, or affiliation with any entity that owns or controls, inputs to electric power production does not allow a seller to raise entry barriers but will allow intervenors to demonstrate otherwise.[14] Finally, as part of the vertical market power analysis, the Commission also requires sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market. The Commission clarified that the obligation in this regard applies to both the seller and its affiliates but is limited to the geographic market(s) in which the seller is located.[15]

7. If a seller is granted market-based rate authority, the authorization is conditioned on: (1) Compliance with affiliate restrictions governing transactions and conduct between power sales affiliates where one or more of those affiliates has captive customers;[16] (2) a requirement to file post-transaction electric quarterly reports (EQR) with the Commission containing: (a) A summary of the contractual terms and conditions in

[1] 16 U.S.C. 824d, 824e (2012).

[2] *Market-Based Rates for Public Utilities,* 107 FERC ¶ 61,019, at P 1 (2004) (initiating rulemaking proceeding).

[3] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 697, FERC Stats. & Regs. ¶ 31,252, *clarified,* 121 FERC ¶ 61,260 (2007) (Clarifying Order), *order on reh'g,* Order No. 697–A, FERC Stats. & Regs. ¶ 31,268, *clarified,* 124 FERC ¶ 61,055, *order on reh'g,* Order No. 697–B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g,* Order No. 697–C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g,* Order No. 697–D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC,* 659 F.3d 910 (9th Cir. 2011), *cert. denied,* 133 S. Ct. 26 (2012).

[4] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62.

[5] *Id.* P 13; 18 CFR 35.37(c)(3).

[6] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 17.

[7] We will use the term ''RTO'' when referring to either an RTO or ISO for easier readability.

[8] The Commission also noted that ''[w]here a generator is interconnecting to a non-affiliate owned or controlled transmission system, there is only one relevant market (i.e., the balancing authority area in which the generator is located).'' Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 232 n.217.

[9] Where the Commission has made a specific finding that there is a submarket within an RTO, that submarket becomes a default relevant geographic market for sellers located within the submarket for purposes of the market-based rate analysis. *See id.* PP 15, 231.

[10] *Id.* P 408.

[11] *Id.* P 440.

[12] Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 176.

[13] Order No. 697–C, FERC Stats. & Regs. ¶ 31,291 at P 18; 18 CFR 35.42(d).

[14] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 446; 18 CFR 35.37(c).

[15] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

[16] 18 CFR 35.39.

every effective service agreement for market-based power sales; and (b) transaction information for effective short-term (less than one year) and long-term (one year or longer) market-based power sales during the most recent calendar quarter; [17] (3) a requirement to file any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority; [18] and (4) a requirement for large sellers to file updated market power analyses every three years.[19]

8. In Order No. 697, the Commission created two categories of sellers.[20] Category 1 sellers are wholesale power marketers and wholesale power producers that own or control 500 megawatts (MW) or less of generation in aggregate per region; that do not own, operate, or control transmission facilities other than limited equipment necessary to connect individual generation facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888 [21]); that are not affiliated with anyone that owns, operates, or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power issues.[22] Category 1 sellers are not required to file regularly scheduled updated market power analyses. Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.[23] However, the Commission may require an updated market power analysis from any market-based rate seller at any time, including those sellers that fall within Category 1.[24]

9. In Order No. 697, the Commission further stated that through its ongoing oversight of market-based rate authorizations and market conditions, the Commission may take steps to address seller market power or modify rates. For example, based on its review of updated market power analyses, EQR filings, or notices of change in status, the Commission may institute a proceeding under section 206 of the FPA to revoke a seller's market-based rate authorization if it determines that the seller may have gained market power since its original market-based rate authorization. The Commission also may, based on its review of EQR filings or daily market price information, investigate a specific utility or anomalous market circumstance to determine whether there has been a violation of RTO market rules or Commission orders or tariffs, or any prohibited market manipulation, and take steps to remedy any violations.[25]

10. As discussed below, after over six years of experience with the implementation of Order No. 697, we propose certain changes and clarifications in order to streamline and simplify the market-based rate program, and to enhance and improve the program's processes and procedures. Based on our experience, we have found that the burdens associated with certain of our requirements may outweigh the benefits in certain circumstances. For these reasons, we propose a number of changes to the market-based rate program which, taken as a whole, will reduce the burden on industry and the Commission, while continuing to ensure that the standards for market-based rate sales of electric energy, capacity and ancillary services result in sales that are just and reasonable. We also include several specifications and propose a number of minor changes that will add clarity to, and improve transparency in, the market-based rate program.

Summary of Proposals

11. Although we intend to retain the horizontal indicative screens, we propose certain modifications to our horizontal market power analysis. First, we propose to allow sellers in RTO markets to address horizontal market power issues in a streamlined manner that would not involve the submission of indicative screens if the seller relies on Commission-approved monitoring and mitigation to prevent the exercise of market power. We also propose to clarify that where all generation capacity owned or controlled by a seller and its affiliates in the relevant balancing authority areas (including first-tier balancing authority areas or markets) is fully committed, sellers may explain that their capacity is fully committed in lieu of submitting indicative screens as part of their horizontal market power analysis.

12. While we are retaining the definition of the default geographic market for the vast majority of sellers, we are proposing a redefined default relevant geographic market for an independent power producer (IPP) with generation capacity located in a generation-only balancing authority area. We propose that, instead of the default geographic market being the generation-only balancing authority area where its generation is located, the IPP's default geographic market(s) will be the balancing authority area(s) of each transmission provider to which the generation-only balancing authority area is directly interconnected.

13. In Order No. 697, the Commission adopted standard indicative screen formats for submitting a horizontal market power analysis. We propose to add rows to the indicative screen format for sellers to specify Simultaneous Transmission Import Limit (SIL) Values, Long-Term Firm Purchases (from outside the study area), and Remote Capacity (from outside the study area), as well as modifications to the descriptive text of the rows to make them more consistent. We further propose to revise the regulations to require that sellers file the indicative screens in a workable electronic spreadsheet format. We also propose to revise the Commission's regulations to codify the requirement, first discussed in *Puget Sound Energy, Inc.,*[26] that sellers submitting SIL studies adhere to the direction and required format for Submittals 1 and 2 found on the Commission's Web site and that sellers submit Submittals 1 and 2 in a workable electronic spreadsheet format.

14. The Commission previously stated that sellers could make simplifying assumptions such as ''performing the indicative screens assuming no import capacity.'' We clarify that ''assuming no import capacity'' means a seller may assume that there is no *competing* import capacity from the first-tier balancing authority areas or markets.

15. The Commission generally permits sellers submitting indicative screens to rate their generation facilities using either nameplate or seasonal capacity ratings. In addition, the Commission allows sellers with energy-limited resources, such as hydroelectric and wind generation facilities, to use a five-year average capacity factor. We

[17] 18 CFR 35.10b.

[18] 18 CFR 35.42.

[19] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 3; 18 CFR 35.37(a)(1).

[20] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

[21] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g,* Order No. 888–A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

[22] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 849 n.1000; 18 CFR 35.36(a).

[23] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

[24] *Id.* P 853.

[25] *Id.* P 5.

[26] *Puget Sound Energy, Inc.,* 135 FERC ¶ 61,254, Appendix B (2011) (*Puget*).

propose to include solar technologies as energy-limited generation resources. We further propose that sellers with energy-limited resources that do not have five years of historical data may use regional capacity factor estimates appropriate to the specific technology as derived by the United States Energy Information Administration (EIA) to determine the capacity for those resources. We also propose to clarify that a seller must use the same capacity rating methodology for similar generation assets throughout a particular filing.

16. The Commission has stated that a seller's uncommitted capacity is determined by adding the nameplate or seasonal capacity of generation owned or controlled through contract and long-term firm capacity purchases, less operating reserves, native load commitments, and long-term firm sales. Therefore, sellers have been reporting their long-term firm purchases as part of their capacity if the purchase granted them control of that capacity. We propose to require sellers to report all of their long-term firm purchases of capacity and/or energy in their indicative screens and asset appendices, regardless of whether the seller has operational control over the generation capacity supplying the purchased power. This approach will help size the market correctly and will establish consistent treatment of long-term firm sales and long-term firm purchases.

17. The Commission's vertical market power analysis examines affiliation, ownership or control of inputs to electric power production, including sites for generation capacity development. In this Notice of Proposed Rulemaking (NOPR), we propose to eliminate the requirement that sellers provide information on sites for generation capacity development in their market-based rate applications and triennial updated market power analyses and to similarly relieve sellers of their obligation to file quarterly land acquisition reports.

18. The Commission requires that sellers report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority. We propose to revise the regulations to clarify that the 100 MW reporting threshold for filing a notice of change in status is not limited to markets previously studied; thus if a seller acquires generation that causes a cumulative net increase of 100 MW or more in *any* relevant geographic market, the seller must file a notice of change in status. We also propose to revise the regulations to include long-term firm purchases of capacity and/or energy in calculating the 100 MW change in status threshold. Although there currently is no threshold for reporting a change in status that results in a new affiliation, we propose to revise the regulations to include a 100 MW threshold for reporting new affiliations.

19. The Commission requires that sellers include with each new application, market power analysis, and relevant change in status notification an asset appendix that lists all affiliates that have market-based rate authority and identifies assets owned or controlled by the seller and its affiliates. We propose to revise the asset appendix by revising the headings of several columns to be more clear and consistent. We also propose several clarifications to the asset appendix requirements. In particular: (1) A seller must enter the entire amount of a generator's capacity, even if the seller only owns part of the generator; (2) a seller must list one of three specified uses for assets in the asset list containing electric transmission and intrastate gas assets; and (3) sellers should not list assets in which passive ownership interests have been claimed. We also propose to modify the asset appendix to add a new column in the list of transmission assets for the citation to the Commission order accepting the OATT or granting waiver of the OATT requirement. We further propose to require that sellers submit the asset lists in an electronic spreadsheet format that can be searched, sorted, and accessed using electronic tools. We also seek comment on whether it would be useful to develop a comprehensive searchable public database of the information contained in the asset appendix, which sellers could access to update their asset appendices.

20. There are two categories of market-based rate sellers. Category 1 sellers are exempt from the requirement to automatically submit updated market power analyses every three years. Market-based rate Category 2 sellers are required to submit an updated market power analysis every three years according to a regional schedule. We include an updated schedule and region map as part of this NOPR.

21. One of the criteria that must be satisfied to be a Category 1 seller in a region is that the seller and its affiliates must own or control 500 MW or less of generation in aggregate in that region. We propose to codify in the Commission's regulations a distinction in determining seller category status for power marketers and power producers. For each region, a power marketer should include all affiliated generation in that region, while a power producer would only need to include affiliated generation capacity that is located in the same region as the power producer's generation asset(s). We propose this difference in treatment based on the fact that a power marketer is assumed to have no home market, while it is assumed that a majority of a power producer's sales will be in market(s) in which it owns generation assets.

22. While sellers have been required to describe their affiliates and upstream owners when filing initial applications, updated market power analyses and notices of change in status involving new affiliations, we propose to add a requirement in the regulations that sellers provide an organizational chart as well. We propose that the organizational chart be similar to that which we require from FPA section 203 applicants.

23. Although we have previously explained that joint filers are permitted to designate one market-based rate seller to file a single, joint master corporate market-based rate tariff for inclusion in the Commission's eTariff database that reflects the joint tariff for all affiliated sellers, many sellers have not taken advantage of the option to file a joint master corporate market-based rate tariff. We propose to clarify on the Commission's Web site how a corporate family that chooses to submit a joint master corporate tariff should identify its designated filer and what each of the other filers should submit into their respective eTariff databases.

24. We also propose to provide clarification regarding several issues related to how to perform SIL studies and regarding the associated Submittals 1 and 2. In particular, we propose to clarify issues relating to what is meant by Open Access Same-Time Information System (OASIS) practices, how to deal with conflicts between OASIS practices and Commission direction provided in Appendix B of *Puget,* and what is the correct load value to use in the SIL study.

25. The Commission has previously stated that the methodology a transmission provider uses to calculate SIL values must be consistent with the methodology it uses for calculating and posting available transmission capability (ATC) and for evaluation of firm transmission service requests. We propose to clarify that ''OASIS practices'' refers to the seasonal benchmark power flow case modeling assumptions, study solution criteria, and operating practices historically used by the first-tier and study area transmission providers to calculate and post ATC and to evaluate requests for

firm transmission service. We further propose to clarify that in performing a SIL study, the transmission provider must follow its OASIS practices consistent with the administration of its tariff. Thus, the seasonal benchmark power flow cases submitted with a SIL study should represent historical operating practices only to the extent that such practices are available to customers requesting firm transmission service. We clarify that where there is a conflict between the transmission provider's tariff or OASIS practices and the Commission's directions in *Puget,* sellers should follow OASIS practices except where use of actual OASIS practices is incompatible with an analysis of import capability from an aggregated first-tier area. We also remind sellers that the calculated SIL value should account for any limits defined in the tariff, such as stability or voltage. We reiterate that sellers may use load scaling to perform a SIL study if they use load scaling in their OASIS practices as long as they submit adequate support and justification for the scaling factor used and how the resulting SIL value compares had the seller used a generation-shift methodology. We also instruct sellers to subtract all long-term firm import transmission reservations, including reservations held by non-affiliated sellers, from the simultaneous total transfer capability (simultaneous TTC) value. Finally, we clarify that the seller should reduce the simultaneous TTC value by subtracting all wheel through transactions used to serve non-affiliated load embedded in the study area using first-tier area generation. These transactions should be accounted for as long-term firm transmission reservations and reported in Submittal 2.

26. We propose to amend Submittal 1 to revise Row 8 to read ''Adjusted Historical Peak Load'' and propose to direct sellers to include all load associated with the balancing authority area(s) within the study area, including non-affiliated load. Submittal 1 requires sellers to use FERC Form No. 714 load values or explain the source of the data used. We seek comment on the appropriate source of historical peak load data.

27. We propose to clarify that where a first-tier market or balancing authority area is directly connected to the study area only by controllable tie lines and is not connected to any other first-tier market or balancing authority area, sellers should follow their OASIS practice regarding calculation and posting of ATC for such areas. If the seller's OASIS practices are incompatible with the SIL study, entities may use an alternative process to account for import capability for such tie lines.

28. We propose to provide standard guidance for data submittals and representations that sellers using the simultaneous TTC must provide, including historical data of actual, hourly, real-time TTC values used for operating the transmission system and posting availability on OASIS for each interface during each seasonal study period. We propose to clarify that sellers may use the maximum sum of TTC values for any day and time during each season as long as they demonstrate that these TTC values are simultaneously feasible. Finally, we reiterate that, if there are limited interconnections between first-tier markets, we will review evidence that potential loop flow between first-tier areas is properly accounted for in the underlying SIL values and we clarify that simply attesting that first-tier markets or balancing authority areas are not directly interconnected is not sufficient evidence that TTC values posted on OASIS are simultaneous.

29. We note that there are certain waivers that the Commission has granted to certain sellers with market-based rate authority, e.g., power marketers and independent or affiliated power producers, such as waiver of the Uniform System of Accounts requirements, specifically waiver of Parts 41, 101, and 141 of the Commission's regulations except §§ 141.14 and 141.15. We clarify that any waiver of Part 101 granted to a market-based rate seller is limited such that waiver of the provisions of Part 101 that apply to hydropower licensees is not granted with respect to licensed hydropower projects. The Commission further directs that, to the extent that a hydropower licensee has been granted waiver of Part 101 as part of its market-based rate authority, the licensee's market-based rate tariff limitations and exemptions section should be revised to provide that the seller has been granted waiver of Part 101 of the Commission's regulations with the exception that waiver of the provisions that apply to hydropower licensees has not be granted with respect to licensed hydropower projects. Similarly, hydropower licensees that have been granted waiver of Part 141 as part of their market-based rate authority should ensure that the limitations and exemptions section of their market-based rate tariffs specify that waiver of Part 141 has been granted, with the exception of §§ 141.14 and 141.15.

30. The Commission's regulations require as part of the vertical market power analysis that sellers make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market. We propose to revise the regulations to make it clear that the obligation to make the affirmative statement applies to both the seller and its affiliates.

III. Discussion

A. Horizontal Market Power

1. Sellers in RTOs

a. Current Policy

31. Section 35.37 of the Commission's regulations requires market-based rate sellers to submit market power analyses: (1) When seeking market-based rate authority; (2) every three years for Category 2 sellers; and (3) at any other time the Commission requests a seller to submit an analysis. A market power analysis must address a seller's potential to exercise horizontal and vertical market power. If a seller studying an RTO as a relevant geographic market (RTO seller) fails the indicative screens for the RTO, it can seek to obtain or retain market-based rate authority by relying on Commission-approved RTO monitoring and mitigation.[27]

32. In 2001, the Commission originally proposed that all sales, including bilateral sales, into an RTO with Commission-approved market monitoring and mitigation would be exempt from the generation market power analysis in effect at that time (the Supply Margin Assessment test) and, instead, would be governed by the specific thresholds and mitigation provisions approved for the particular market.[28] However, the Commission subsequently concluded that it would no longer exempt sellers located in markets with Commission-approved market monitoring and mitigation from providing generation market power analyses, on the basis that requiring sellers located in such markets to submit indicative screens provides an additional check on the potential for market power.[29]

[27] In Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 111, the Commission stated that ''to the extent a seller seeking to obtain or retain market-based rate authority is relying on existing Commission-approved [RTO] market monitoring and mitigation, we adopt a rebuttable presumption that the existing mitigation is sufficient to address any market power concerns.''

[28] *AEP Power Marketing, Inc.,* 97 FERC ¶ 61,219, at 61,970 (2001).

[29] *AEP Power Marketing, Inc.,* 107 FERC ¶ 61,018, at P 186 (April 14, 2004 Order), *order on reh'g,* 108 FERC ¶ 61,026 (2004).

33. In Order No. 697, the Commission declined the request that it reinstate the prior RTO exemption, stating it ''will continue to require generation market power analyses from all sellers, including those in [RTO] markets.'' [30] In Order No. 697–A, the Commission denied requests to reconsider its decision stating that

> the dual protections of individual market power analyses and mitigation rules of the [RTOs] provide the Commission with better ability to discern and protect against potential market power. While, as discussed below, mitigation rules for the individual [RTOs] in most cases should be sufficient to guard against the exercises of market power, we are not comfortable at this time with dispensing of the requirement for sellers in [RTOs] to provide us with horizontal market power analyses. Any administrative burden of submitting such analyses is outweighed by the additional information gleaned with respect to a specific seller's market power.[31]

34. Since the issuance of Order No. 697, it has been the Commission's practice to grant sellers market-based rate authority or allow them to retain market-based rate authority where they have failed indicative screens in an RTO but have relied on Commission-approved monitoring and mitigation.[32] RTO sellers are sellers that study an RTO as a relevant geographic market, including those that sell bilaterally. While the burdens of preparing the indicative screens are not necessarily greater for RTO sellers than for sellers in other markets, the submission of indicative screens yields little practical benefit since it has been the Commission's practice to allow RTO sellers that fail the indicative screens to rely on RTO monitoring and mitigation. Thus, for sellers in RTOs, the burden of submitting indicative screens may not be ''outweighed by the additional information gleaned with respect to a specific seller's market power.'' [33]

b. Proposal

35. We propose to modify the approach taken in Order No. 697 to reflect current practice and reduce the burden on these sellers. Specifically, we propose to allow market-based rate sellers in RTO markets with Commission-approved monitoring and mitigation to address horizontal market power issues in a streamlined manner when submitting initial applications requesting market-based rate authority and updated market power analyses. We note that this proposal includes RTO sellers who may have bilateral contracts not subject to the Commission-approved monitoring and mitigation. We find that the existence of monitoring and mitigation in an organized market generally results in a market where prices are transparent.[34] This disciplines forward and bilateral markets by revealing a benchmark price and keeping offers competitive. For example, if a seller offers what a buyer perceives as a non-competitive price in the bilateral market, that buyer can opt to purchase in the spot market. This provides a strong incentive for the seller to offer at a competitive price in the forward and bilateral markets.

36. Under this streamlined approach, RTO sellers would not have to submit indicative screens as part of their horizontal market power analyses if they rely on Commission-approved monitoring and mitigation to prevent the exercise of market power. Rather, to address horizontal market power effects, RTO sellers instead would simply state that they are relying on such mitigation to address any potential market power they might have, and provide an asset appendix and describe their generation and transmission assets. Under this proposal, all RTO sellers seeking market-based rate authority in an RTO market would make an initial filing, consistent with current practice, and those sellers required to file updated market power analyses every three years (i.e., Category 2 sellers) would continue to make their scheduled filings. To address horizontal market power effects, both the initial applications for market-based rate authorization and the updated market power analyses would include: (1) A statement that the seller is relying on RTO mitigation to address any potential market power it might have; (2) identification and description of generation and transmission assets; and (3) an asset appendix.[35] In all scenarios, the Commission would retain the ability to require an updated market power analysis, including indicative screens, from any market-based rate seller at any time.

37. Thus, we propose to add a paragraph to the end of § 35.37(c) (regarding horizontal market power), making it paragraph (c)(6) under this subsection, to read as follows: *In lieu of submitting the indicative screens, Sellers in regional transmission organization and independent system operator markets with Commission-approved market monitoring and mitigation must include a statement that they are relying on such mitigation to address any potential horizontal market power concerns.*

38. In addition, we note that market-based rate sellers are not required by Order No. 697 or the regulations to provide indicative screens in their horizontal market power analyses when submitting change in status filings.[36] In Order No. 697–A, the Commission stated:

> The existing [change in status] reporting requirement provides the Commission a sufficient tool to allow it to assess whether there is a potential market power concern and, if so, the Commission reserves the right to require the seller to submit a market power study. In addition, the seller is required to provide an affirmative statement as to what effect, if any, the added generation has on its market power. *For a seller to make such an affirmative statement, it must determine what effect the added generation has on the market power analysis.* To the extent the seller makes an affirmative statement that there is no effect on its market power, it is bound to that statement and faces remedial action, including civil penalties, if it has misrepresented the effect.[37]

39. Historically, when a change in status filing has created the likelihood that a seller would fail an indicative screen, the seller has often voluntarily

[30] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 290.

[31] Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 110.

[32] *See, e.g., Niagara Mohawk Power Corp.,* 123 FERC ¶ 61,175, at P 28 (2008) (failures in the New York City and Long Island submarkets of the New York Independent System Operator, Inc.); *Dominion Energy Marketing, Inc.,* 125 FERC ¶ 61,070, at PP 26–27 (2008) (failures in the Connecticut submarket of ISO New England, Inc.); *PSEG Energy Resources & Trade LLC,* 125 FERC ¶ 61,073, at PP 31–32 (2008) (failures in the PJM-East submarket). There are also numerous delegated letter orders granting a seller market-based rate authority where the seller relies on Commission-approved monitoring and mitigation in RTO markets. *See, e.g., TransCanada Energy Marketing ULC,* Docket No. ER07–1274–001 (Jan. 23, 2009) (delegated letter order). Finally, the Commission has not initiated any investigations pursuant to section 206 of the FPA for any RTO sellers failing indicative screens since the issuance of Order No. 697; in all cases where RTO sellers failed, the Commission relied on the Commission-approved monitoring and mitigation to prevent the seller's ability to exercise any potential market power.

[33] Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 110.

[34] April 14 Order, 107 FERC ¶ 61,018 at P 189.

[35] Applicants making these filings would continue to be required to provide the following information that is related to the *non*-horizontal market power issues: (1) A standard vertical market power analysis; (2) category status representations; (3) a demonstration that sellers continue to lack captive customers in order to support obtaining or retaining a waiver of the affiliate restrictions, if requested; and (4) any other information that is required for that particular filing.

[36] Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 506 (''[W]e will not require entities to automatically file an updated market power analysis with their change in status filings. . . . Furthermore, regardless of the seller's representation, if the Commission has concerns with a change in status filing (for example, market shares are below 20 percent, but are relatively high nonetheless), the Commission retains the right to require an updated market power analysis at any time.'').

[37] *Id.* P 505 (emphasis added).

submitted indicative screens in order to determine the effect of the change on its market power. We clarify that, with this proposed streamlined approach, an RTO seller need not submit indicative screens with its change in status filing even where it may have market power. Instead, the seller may state that it is relying on Commission-approved monitoring and mitigation to mitigate any potential market power it may have. However, the Commission still reserves the right to require an updated market power analysis at any time.

40. We seek comment on this proposal.

2. *Sellers With Fully-Committed Long-Term Generation Capacity*

a. Current Policy

41. The Commission has found that, if generation is committed to be sold on a long-term firm basis to one or more buyers and cannot be withheld by a seller, it is appropriate for a seller to deduct such capacity when performing the indicative screens. In Order No. 697–A, the Commission stated:

> once capacity is committed long-term, regardless of how that capacity is priced (e.g., whether linked to spot prices or not), the ability of the firm to use that capacity to exercise market power in the spot market is severely limited or non-existent. The ability to collude will be determined by the remaining uncommitted capacity in the spot market, not the capacity that is already committed under long-term contracts. Therefore, we conclude that it is appropriate to subtract capacity committed under long-term contracts when calculating a seller's uncommitted capacity for purposes of performing the indicative screens.[38]

42. Thus, the capacity dedicated to long-term firm power sales should be deducted from seller and affiliate capacity in Row C (Long-Term Firm Sales) of the standard screen format provided in Appendix A to Subpart H of Part 35 for submitting the indicative screens.[39] However, some sellers have filed indicative screens in which they did not deduct their fully-committed capacity or incorrectly reported capacity as fully committed when it was only committed for some seasons, for less than one year, or under certain market conditions.[40] Moreover, some sellers have argued that there is no need to perform indicative screens when they can demonstrate that all of their capacity is committed under long-term contract.

b. Proposal

43. It is the Commission's policy to study uncommitted generation capacity in the indicative screens.[41] Currently, the seller's owned or controlled capacity in megawatts is entered into the indicative screens and the fully-committed long-term (one year or longer) capacity is then deducted. If all of the seller and its affiliates' capacity in the relevant balancing authority areas or markets including first-tier balancing authority areas or markets is fully committed, this exercise results in a purely mathematical task (netting to zero uncommitted capacity), thus providing no significant additional information. Therefore, we clarify that where all generation owned or controlled by a seller and its affiliates in the relevant balancing authority areas or markets including first-tier balancing authority areas or markets is fully committed, sellers may explain that their capacity is fully committed in lieu of including indicative screens in their filings in order to satisfy the Commission's market-based rate requirements regarding horizontal market power. The Commission proposes to clarify that, in order to qualify as ''fully committed,'' a seller must commit the capacity so that none of the excluded capacity is available to the seller or its affiliates for one year or longer.

44. We propose that sellers claiming that all of their relevant capacity[42] is ''fully committed'' would have to include the following information: The amount of generation capacity that is fully committed, the names of the counterparties, the length of the long-term contract, the expiration date of the contract, and a representation that the contract is for firm sales for one year or longer. In order to qualify as fully committed, the commitment of the generation capacity cannot be limited during that 12-month consecutive period in any way, such as limited to certain seasons, market conditions, or any other limiting factor. Furthermore, a seller's generation would not qualify as ''fully committed'' if, for example, the seller has generation necessary to serve native load, provider of last resort obligations, or a contract that could allow the seller to reclaim, recall, or otherwise use the capacity and/or energy or regain control of the generation under certain circumstances (such as transmission availability clauses).

45. Finally, consistent with the existing regulations, a change in status filing will be required when a long-term firm sales agreement expires if it results in a net increase of 100 MW or more.[43]

46. We seek comment on these proposals.

3. Relevant Geographic Market for Certain Sellers in Generation-Only Balancing Authority Areas

a. Current Policy

47. The Commission stated in Order No. 697 that ''the horizontal market power analysis centers on and examines the balancing authority area where the seller's generation is physically located''[44] and that the default relevant geographic market (default market) under both indicative screens ''will be first, the balancing authority area where the seller is physically located [the seller's home balancing authority area], and second, the markets directly interconnected to the seller's balancing authority area (first-tier balancing authority area markets).''[45] However, the Commission also noted that ''[w]here a generator is interconnecting to a non-affiliate owned or controlled transmission system, there is only one relevant market (i.e., the balancing authority area in which the generator is located).''[46] Similarly, the Commission continued to require RTO sellers ''to consider, as part of the relevant market, only the relevant [RTO] market and not first-tier markets to the [RTO].''[47]

48. The Commission further stated in Order No. 697 that a ''balancing authority area means the collection of generation, transmission, and loads

[38] *Id.* P 41.

[39] 18 CFR 35.37(c)(4). We note that the market share screen was inadvertently deleted from Appendix A to Subpart H of Part 35 at the time that the Commission made a correction to the pivotal supplier screen in Order No. 697–A. *See* Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at n.6. We propose to amend Appendix A to Subpart H of Part 35 to add the market share screen that was inadvertently removed and to make proposed changes to both indicative screens as discussed herein.

[40] The EQR data dictionary defines firm power sales as sales that are non-interruptible for economic reasons and states that contracts with durations of one year or greater are long-term.

[41] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 37–38; April 14, 2004 Order, 107 FERC ¶ 61,018 at P 71 (''We will adopt an uncommitted pivotal supplier analysis that will evaluate the potential of an applicant (including its affiliates) to exercise market power based on the control area market's annual peak demand. We will also adopt an uncommitted market share analysis that will seasonally evaluate the market share of the uncommitted capacity of an applicant and its affiliates.'').

[42] ''Relevant'' capacity refers to seller and affiliated capacity in the study area, including the first tier.

[43] Such a change would be a departure from the characteristics the Commission relied upon in granting market-based rate authority. *See* 18 CFR 35.42(a).

[44] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 37.

[45] *Id.* P 232.

[46] *Id.* n.217.

[47] *Id.* P 231 n.215.

within the metered boundaries of a balancing authority, and the balancing authority maintains load/resource balance within this area.'' [48] Order No. 697 rejected the concept of a ''hub'' as a relevant geographic market, noting that for purposes of evaluating market power, ''trading hub data alone does not provide a foundation for the Commission to analyze transmission limitations and other transfers of energy.'' [49] However, Order No. 697 did not specifically address the default market for a seller located in a balancing authority area that has generation capacity but no load or customers (a generation-only balancing authority area). As discussed below, the Commission is concerned that the default market definition from Order No. 697 does not accurately reflect the market for all sellers, particularly in the Western Electricity Coordinating Council (WECC), which has several generation-only balancing authority areas with generation that is not sited close to load.

49. The issue of what constitutes an appropriate market for an IPP in a generation-only balancing authority area has arisen because there is often no clear nexus between the default market, the generation resources an IPP competes with, and the customers an IPP actually serves.[50] Since the implementation of Order No. 697, we have observed several instances in which the default market may not be appropriately defined for some IPPs in generation-only balancing authority areas.[51] Moreover, the issue of proposing an appropriate geographic market for IPPs in generation-only balancing authority areas that do not serve load in the default market (i.e., their home balancing authority area) is further complicated when the IPP makes sales to a trading hub (e.g., Palo Verde). The following factors illustrate some differences between IPPs and franchised public utilities in terms of identifying the appropriate geographic markets.

50. Franchised public utilities typically have a geographically-defined franchised service territory and an obligation under state law to serve retail customers residing within that service territory.[52] Thus, the home balancing authority area reflects the primary market in which a franchised public utility sells electricity, because this is where its customers are located. In addition, a franchised public utility's generation capacity is usually dedicated primarily to serving load in its franchised service territory even though it may sell at least some wholesale power outside of its service territory. Therefore, the default market (home and first-tier balancing authority areas) is appropriate for franchised public utilities because there is a clear nexus between the physical location of a franchised public utility's generation and the load served by that generation.

51. In contrast, an IPP does not have a franchised service territory, or an obligation to serve retail customers.[53] Moreover, generation-only balancing authority areas do not have any load; therefore, these balancing authority areas do not appear to meet the Commission definition of a default market as they do not, by definition, ''maintain[] load/resource balance with the area.'' [54] IPPs may directly interconnect to transmission providers at energy trading hubs to facilitate sales to one or more markets within the broader region.

b. Proposal

52. In light of the unusual and complex circumstances identified above that are associated with defining the relevant geographic market of an IPP located in a generation-only balancing authority area, and in light of the fact that a generation-only balancing authority area is not a market, we propose that the default relevant geographic market(s) for such a seller would be the balancing authority areas of each transmission provider to which its generation-only balancing authority area is directly interconnected.[55] Thus, if an IPP's generation-only balancing authority area is directly interconnected with one or more balancing authority areas, the IPP would provide indicative screens for each of those balancing authority areas.

53. We further propose that such IPP seller study *all* of its uncommitted generation capacity from the generation-only balancing authority area in the balancing authority area(s) of each transmission provider to which it is directly interconnected, since *all* such uncommitted capacity could potentially be sold in each market that is directly interconnected to the IPP's generation-only balancing authority area, even if the IPP has not sold into that market in the past.

54. To illustrate how this proposal would work, if an IPP is located in a generation-only balancing authority area that is embedded within a transmission provider's balancing authority area, and that balancing authority area is the only balancing authority area that the IPP's generation-only balancing authority area is directly interconnected with, then the IPP will provide indicative screens for that transmission provider's balancing authority area. An IPP in this situation would not need to study the transmission provider's balancing authority first-tier markets, just as would be the case if that generator were similarly located in the transmission provider's balancing authority area. An example of this situation is NaturEner Power Watch, LLC (NaturEner), which has a generation-only balancing authority area that is located within the NorthWestern Energy balancing authority area. Thus, NaturEner would provide indicative screens that examine all of its uncommitted capacity in the NorthWestern Energy balancing authority area. NaturEner would not need to study itself in any other balancing authority areas unless its generation-only balancing authority area is directly interconnected to other balancing authority areas.

55. Similarly, if an IPP is located in a generation-only balancing authority area in a remote area such as the desert

[48] *Id.* P 251.

[49] *Id.* P 275. We note that a number of hubs (e.g., Palo Verde, Four Corners, and Mead, etc.) are located at the intersections of clearly-defined balancing authority areas. Historically, identifying the market for generation located at the hub was not important because vertically-integrated utilities used their own generation to meet their load. As the markets have evolved, many hubs have become trading centers and some IPPs have built generation near hubs. The Commission has defined a trading hub as ''a representative location at which multiple sellers buy and sell power and ownership changes hands, typically with trading of financial and physical products.'' *Id.*

[50] For purposes of market power analyses for market-based rate authority, we propose to define an IPP as a generation resource that has power production as its primary purpose, does not have a native load obligation, is not affiliated with any transmission owner located in the first-tier markets in which the IPP is competing and does not have an affiliate with a franchised service territory. This IPP could also have an OATT waiver on file.

[51] *See, e.g., Sundevil Power Holdings, LLC,* Docket No. ER10–1777–000 (Sept. 15, 2010) (delegated letter order).

[52] *See* 18 CFR 35.36(a)(5). A franchised public utility's obligation to serve is modified, but not entirely eliminated, in states that have implemented ''retail choice.''

[53] Thus, the Commission's policy is to use the balancing authority area(s) (or RTO) where an IPP's generation is physically located as the relevant geographic market(s). Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 232 n.217.

[54] *Id.* P 251; *see also* NERC Glossary of Terms Used in NERC Reliability Standards 10 (2014) (''The collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.''), *http://www.nerc.com/files/glossary_of_terms.pdf.*

[55] Consistent with the Commission's proposal above in the section dealing with proposed new filing requirements for sellers in RTOs, the IPP would not need to study itself in any RTO market to which its generation-only balancing authority area is directly interconnected. Instead, the IPP must include a statement that it is relying on Commission-approved market monitoring and mitigation to address any potential horizontal market power concerns.

Southwest, then the Commission proposes that the IPP would have to provide indicative screens for the balancing authority area(s) of the transmission provider(s) to which its generation-only balancing authority area is directly interconnected. We further propose that an IPP assume that *all* of its uncommitted capacity may compete in each balancing authority area to which its generation-only balancing authority area is directly interconnected, since, as noted above, *all* such uncommitted capacity could potentially be sold in each market to which there is a direct interconnection, even if the IPP has not sold into that market in the past. Thus, for example, if it were the case that the generation-only balancing authority areas of the Gila River Power Company LLC and Sundevil generating plants are each directly interconnected with the balancing authority area operated by Arizona Public Service Co. (APS), then each of those IPPs would study themselves in the APS balancing authority area, and each would include all other competing generators from generation-only balancing authority areas directly interconnected with the APS balancing authority area in that study as well. These IPPs in generation-only balancing authority areas would also study themselves in the same manner in any other balancing authority areas to which their generation-only balancing authority area is directly interconnected.[56] Consistent with what is proposed above, an IPP in this situation would not need to study any first-tier markets, just as would be the case if it were a generator located within the transmission provider's home balancing authority area.[57]

56. If an IPP in a generation-only balancing authority area is directly interconnected to a transmission provider at an energy trading hub, we propose that the IPP would provide screens that study itself in the balancing authority area of each transmission provider that is directly interconnected at the trading hub. Thus, the balancing authority areas that are directly interconnected at the hub would each be relevant geographic markets for that IPP, and the IPP would provide screens that study the IPP in each of those transmission providers' balancing authority areas.[58] Consistent with what is proposed above, we propose that the IPP should provide indicative screens that assume that *all* of its uncommitted capacity may compete in each of the balancing authority areas that are directly interconnected at that trading hub, since *all* such uncommitted capacity could potentially be sold in each market to which there is a direct interconnection, even if the IPP has not sold into that market in the past.[59] Thus, for example, if an IPP in a generation-only balancing authority area in the Arizona desert is directly interconnected to a transmission provider at the Palo Verde trading hub at the Palo Verde and Hassayampa switchyards,[60] then it would provide screens that study all of its uncommitted capacity in each balancing authority area that is directly interconnected at the switchyard. Also, consistent with what is proposed above, an IPP in this situation would not need to provide screens that study itself in any markets that are first tier to the various balancing authority areas that are directly interconnected at the switchyard.

57. We seek comment on these proposals.

4. Reporting Format for the Indicative Screens

a. Current Policy

58. When submitting a horizontal market power analysis, sellers are required to use the standard screen format provided in Appendix A to Subpart H of Part 35 for submitting their indicative screens. Although sellers submit their indicative screens based on the formats provided in Appendix A to Subpart H of Part 35 and in Commission Order Nos. 697[61] and 697–A,[62] they currently perform their own mathematical calculations. The Commission does not currently provide pre-programmed spreadsheets that allow for automated mathematical calculations for sellers' indicative screens. When preparing their screens, certain sellers also perform SIL studies, which produce data (e.g., SIL values) applicable to the indicative screens.

59. In *Puget,*[63] the Commission adopted a standardized format for reporting SIL study results in order to help ensure greater efficiency. The Commission directed sellers to refer to the guidance, directions, and reporting format provided in Appendix B of *Puget* when preparing and submitting SIL studies.[64] Appendix B of *Puget* discusses various submittals, including ''Submittal 1,'' which is a spreadsheet that calculates the SIL values to be used in the indicative screens. Submittal 1 is a summary spreadsheet of the SIL components used to calculate the SIL values and is currently posted on the Commission's Web site. The last line of Submittal 1 (Row 10) contains the SIL values that sellers should use in preparing their screens.[65] Currently, the screen reporting format in Appendix A of Subpart H, which is discussed in Order Nos. 697 and 697–A, does not have a row for SIL values even though the Uncommitted Capacity Import values in the indicative screens are constrained by the SIL value from Row 10 of Submittal 1, i.e., the sum of the affiliated and non-affiliated Uncommitted Capacity Import values cannot exceed the SIL value.[66]

60. Appendix B of *Puget* also discusses ''Submittal 2,'' which is a spreadsheet that identifies long-term firm transmission reservations used to import power from seller and affiliate generating resources in the first-tier area to serve native load in the study area. The calculations performed in Submittal 2 provide detailed data summed to produce the total value of long-term firm transmission reservations, which are included in Row 5 of Submittal 1.

61. The Commission provided additional direction on the completion of the indicative screens in *Vantage Wind Energy, LLC.*[67] In particular, the Commission provided direction on how to account for both remote generation resources and long-term firm power purchases from generation resources located outside a seller's home balancing authority area when

[56] However, the transmission provider, in all cases, would consider the IPP generation capacity as first-tier generation when conducting its SIL studies and indicative screens.

[57] *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 232 n.217.

[58] When we state that the transmission providers' balancing authority areas are directly interconnected at the hub we are assuming that all such balancing authority areas are directly interconnected with each other.

[59] When providing screens for the directly interconnected balancing authority areas, the IPP would also include the uncommitted capacity of any other generation-only balancing authority area also interconnected to the same transmission providers at that hub. However, the transmission providers, in all cases, would consider the IPP generation capacity as first-tier generation when conducting their SIL studies and indicative screens.

[60] A generator interconnected to a transmission provider at a location where the transmission provider is directly interconnected to other transmission providers would also be directly interconnected to those other transmission providers.

[61] *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 305–306.

[62] *See* Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 17 n.6, Appendix A.

[63] *Puget,* 135 FERC ¶ 61,254 at Appendix B.

[64] *Id.* P 20.

[65] *Id.* at Appendix B.

[66] *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 361 (explaining that a SIL study determines ''how much competitive supply from remote resources can serve load in the study area.'').

[67] *Vantage Wind Energy, LLC,* 139 FERC ¶ 61,063, at P 21 (2012) (*Vantage Wind*).

performing the indicative screens.[68] Currently, the indicative screen reporting formats in Appendix A of Subpart H and Order Nos. 697 and 697–A do not have separate rows for the value of installed capacity of remote generation resources or the capacity of resources that are external to the study area that support long-term firm power purchase agreements that serve load in the study area; both values are components of the SIL value used in the screens.

b. Proposal

62. We propose to amend the indicative screen reporting format in Appendix A of Subpart H. We propose that Appendix A include both the pivotal supplier and market share screen reporting formats with new rows for SIL values, Long-Term Firm Purchases (from outside the study area), and Remote Capacity (from outside the study area). Including a row in the indicative screens for SIL value will help reinforce the relationship between the values for affiliated and non-affiliated capacity imports and the SIL value. For purposes of clarification, we also propose to modify the descriptive text of the rows in the indicative screens for Installed Capacity, Long-Term Firm Purchases, Long-Term Firm Sales, and Uncommitted Capacity Imports.[69] As discussed below, the new rows and their descriptions will clarify that the resources are either inside or outside the study area for Installed Capacity and Long-Term Firm Purchases. Furthermore, the description for Uncommitted Capacity Imports will now be consistent across both indicative screens. An example of the proposed new indicative screen reporting formats for Appendix A to Subpart H is provided in Appendix A of this NOPR.

63. Additionally, we propose to revise the regulations at 18 CFR 35.37(c)(4) to require sellers to file the indicative screens in a workable electronic spreadsheet format.[70] The proposed new language is as follows: When submitting (*proposing to delete*) [a horizontal market power analysis]*the indicative screens,* a Seller must use the form*at* provided in Appendix A of this subpart and *file the indicative screens in an electronic spreadsheet format. A Seller must* include all supporting materials referenced in the *indicative screens (proposing to delete*) [form].

We propose to post on the Commission's Web site a pre-programmed spreadsheet as an example that sellers may use to submit their indicative screens.[71] The example spreadsheet contains pre-programmed cells that allow for summations and data comparisons, as well as cells that restrict entries to negative or positive values where appropriate. We believe that these proposed changes to the indicative screens, as reflected in Appendix A to this NOPR, will aid sellers when preparing screens and minimize the need for follow up inquiries from staff and amended filings.

64. We also propose to add a paragraph to the end of § 35.37(c), making it paragraph (c)(5), to codify the requirement in *Puget* that sellers submitting SIL studies adhere to the direction and required format for Submittals 1 and 2 found on the Commission's Web site[72] and submit their information, as instructed, in workable electronic spreadsheets. The proposed new language is as follows: *Sellers submitting simultaneous transmission import limit studies must file Submittal 1, and, if applicable, Submittal 2, in the electronic spreadsheet format provided on the Commission's Web site.*

Revising the regulations to reflect this requirement will help ensure that sellers are aware of the requirement to include Submittals 1 and 2 in workable electronic spreadsheets as well.[73]

65. We seek comment on these proposals.

5. Competing Imports

a. Current Policy

66. The Commission permits sellers to make simplifying assumptions, where appropriate, and to submit streamlined horizontal market power analyses.[74] In Order No. 697, the Commission stated that ''a seller, where appropriate, can make simplifying assumptions, such as performing the indicative screens assuming no import capacity or treating the host balancing authority area utility as the only other competitor.''[75]

b. Proposal

67. We clarify that the phrase ''assuming no import capacity'' means that a seller may assume ''no *competing* import capacity'' from the first-tier markets (i.e., adjacent balancing authority areas or markets). This clarification is consistent with the April 14, 2004 Order[76] and other Commission orders.[77] We further clarify that the seller must still include any uncommitted capacity that it and its affiliates can import into the study area. We believe that this clarification will aid sellers when preparing screens and minimize the need for follow up

[68] *Id.* (''[L]oad serving entities should add their share of remote generation to Installed Capacity (Line A of the market share screen and the pivotal market share screen) and the amount of any long-term firm purchases in 'Long-term Firm Purchases' (Line B of the market share screen and the pivotal supplier screen) of the indicative screens, when load-serving entities have long-term firm transmission rights associated with those resources.'').

[69] We propose to change the phrase ''Imported Power'' in Rows D and H of the pivotal supplier screen to ''Uncommitted Capacity Imports.'' We also propose to make the same change to Row E of the Market Share Screen. Thus, all four rows in the indicative screens will have the same text for this field, which represents affiliate and non-affiliate uncommitted capacity able to be imported from the first tier.

[70] ''Workable electronic spreadsheet'' refers to a machine readable file with intact, working formulas as opposed to a scanned document such as an Adobe PDF file.

[71] If a seller chooses to create its own workable electronic spreadsheet, the file it submits must have the same format as the sample spreadsheet on the Commission Web site. Specifically, it must have one worksheet for each of the indicative screens and each screen must have the same exact rows, columns, and descriptive text as the sample worksheets. Cells requiring negative values must be pre-programmed to only allow negative values. Likewise, cells with calculated values must contain a working formula that calculates the value for that cell. Finally, the file must be submitted in one of the spreadsheet file formats accepted by the Commission for electronic filing. *See* FERC, Acceptable File Formats (Jan. 2012), *available at http://www.ferc.gov/docs-filing/elibrary/accept-file-formats.asp.*

[72] The sample spreadsheets for Submittals 1 and 2 are found at the Commission's Web site at *http://www.ferc.gov/industries/electric/gen-info/mbr/authorization.asp* under ''Quick Links.''

[73] Here, as with the indicative screens, if a seller chooses to create its own workable electronic spreadsheet, the file it submits must have the same format as the sample spreadsheet on the Commission Web site. Specifically, it must have the same exact rows, columns, and descriptive text as the sample spreadsheet. Likewise, cells with calculated values must contain working formulas that calculate the value for that cell. Finally, the file must be submitted in one of the spreadsheet file formats accepted by the Commission for electronic filing. *See* FERC, Acceptable File Formats (January 2012), *available at http://www.ferc.gov/docs-filing/elibrary/accept-file-formats.asp.*

[74] *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 308, 321; April 14, 2004 Order, 107 FERC ¶ 61,018 at P 38.

[75] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 321.

[76] April 14, 2004 Order, 107 FERC ¶ 61,018 at P 38 (''Where appropriate, the screens allow the applicant to submit streamlined applications or to forego the generation market power analysis entirely and, in the alternative, go directly to mitigation. For example, if an applicant would pass the screens without considering *competing* supplies from adjacent control areas, the applicant need not include such imports in its studies.'' (emphasis added)).

[77] *See, e.g., Acadia Power Partners, LLC,* 107 FERC ¶ 61,168, at P 12 (2004) (''We remind applicants that they may provide streamlined applications, where appropriate, to show that they pass both screens. For example, if an applicant would pass both screens without considering *competing* supplies imported from adjacent control areas, the applicant need not include such imports.'' (emphasis added) (footnote omitted)).

inquiries from staff and amended filings.

6. Capacity Ratings

a. Current Policy

68. The Commission allows sellers submitting indicative screens to rate their generation facilities using either nameplate or seasonal capacity ratings.[78] With regard to sellers with energy-limited resources, such as hydroelectric and wind generation facilities, in lieu of using nameplate or seasonal capacity ratings in their submissions, the Commission stated in Order No. 697 that it would allow such sellers to provide an analysis based on historical capacity factors reflecting the use of a five-year average capacity factor, including a sensitivity test using the lowest and highest capacity factors for the previous five years.[79] Since the issuance of Order No. 697, the Commission has recognized that sellers with newly-built energy-limited generation facilities may not have five years of historical data for use in their analyses. To address this situation, the Commission has allowed the use of the five most recent years of regional average capacity factors from the EIA to determine capacity factors for those resources.[80]

b. Proposal

69. We recognize that there are energy-limited generation resources, such as solar photovoltaic and solar thermal facilities (collectively, solar technologies), which were not identified in Order No. 697. We propose to identify solar technologies as energy-limited generation resources and to allow such sellers to use either nameplate capacity or five-year historical average capacity ratings to determine the capacity rating for their solar technology generation resources, and, as noted above, sellers may use EIA regional average capacity factors for the previous five years to determine capacity for those resources. Similar to other energy-limited generation resources, sellers using the five-year historical average must include sensitivity tests using the lowest and highest capacity factors for the previous five years. We propose that sellers with energy-limited generation facilities (including those using solar technology) that do not have five years of historical data may use the EIA-derived, regional capacity factor estimates appropriate to their specific technology as defined in the EIA publication *Annual Energy Outlook*.[81] We also propose to require that sellers without five years of historical data use either nameplate capacity or the EIA-derived, regional capacity factor estimates, but not seasonal ratings.[82] For sellers using EIA-derived estimates, we propose to require that they submit their calculation of the regional capacity factor as well as copies of the appropriate tables of regional generation capacity ratings from EIA's *Annual Energy Outlook* in their filing. In addition, the Commission seeks industry input in identifying additional technologies that are energy-limited generation resources, and what capacity factors should be used to rate them.

70. While we are proposing this treatment for solar capacity, we acknowledge that photovoltaic solar facilities will effectively function with zero capacity during nighttime hours or during heavy overcast conditions, as the sun does not provide much, if any, solar energy from photovoltaic solar facilities during such conditions. Thus, we are seeking comment on whether it may make more sense to assign different capacity factors to solar generation as compared to other generation based on these operating characteristics. In particular, we seek comment on whether we should allow such sellers to use either nameplate capacity or five-year historical average capacity ratings during peak hours to determine the capacity rating for their solar technology generation resources, and, as noted above, sellers may use EIA regional average capacity factors over peak hours for the previous five years to determine capacity for those resources. *In other words, we seek comment on whether using peak hours will provide a better measure of capacity for photovoltaic solar, as compared to all hours, which would necessarily include hours in which we can predict that output will be zero.*

71. Finally, consistent with Order No. 697, we propose to clarify that, within each filing, a seller must use the same capacity rating methodology for similar generation assets.[83] Specifically, if a seller chooses in a particular filing to use seasonal ratings for one of its thermal units, it must use seasonal ratings for all of its thermal units in that filing. Likewise, if the seller chooses to use an alternative rating methodology, such as the five-year average for any energy-limited generation resource, it must use the five-year average for all energy-limited generation resources in that filing, for which five years of historical data is available; otherwise it must use the EIA-derived capacity factors for those resources for which the seller does not have five years of data. The seller must specify in the filing's transmittal letter or accompanying testimony, and in the generation asset appendix, which rating methodologies it is using. The seller must use the specified rating methodologies consistently throughout its entire filing, including in its transmittal letter, asset appendix, and indicative screens. This proposal does not preclude the seller from using a different capacity rating methodology for each type of generation facility (thermal or energy-limited) in subsequent filings (e.g., in its initial filing a seller may use nameplate ratings for its thermal units, then in its next filing choose to use seasonal ratings for its thermal units). We believe that when a seller consistently uses the same rating methodology within a filing, it will improve the accuracy of the horizontal market power analysis by linking the capacity values in the transmittal letter, accompanying testimony, generation asset appendix, and the indicative screens.

72. We seek comment on these proposals.

[78] *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 343 (''We will adopt the NOPR proposal that allows sellers to use seasonal capacity. We clarify that each seller must be consistent in its choice and thus must choose either seasonal or nameplate capacity and use it consistently throughout the analysis. In addition, a seller using seasonal capacity must identify in its submittal from what source the data was obtained.''). The Commission adopted the EIA definition of seasonal capacity as reported on Form EIA–860, Schedule 3, Part B, Line 2, which provides that seasonal capacity is the '''net summer or winter capacity''' and EIA instructions that '''net capacity should reflect a reduction in capacity due to electricity use for station service or auxiliaries.''' *Id.* (footnotes omitted).

[79] *Id.* P 344.

[80] *See Golden Spread Electric Coop., Inc.,* 138 FERC ¶ 61,208, at P 16 (2012) (*Golden Spread*) (finding that a five-year average wind capacity factor derived from EIA data represents an appropriate analysis).

[81] *See* EIA, Annual Energy Outlook (May 2014), *available at http://www.eia.gov/forecasts/aeo/source_renewable.cfm.* In Table 58 through Table 58.9 ''Renewable Energy Generation by Fuel—(by Area),'' EIA provides data for the total generating capacity, and actual (or estimated) electricity generated by renewable type for 22 ''electricity market module regions'' covering the lower 48 states. After converting the inputs into matching units, sellers can divide actual (or estimated) electricity generated by installed capacity to find the capacity factor.

[82] Sellers should use either nameplate, a five-year average of historical data, or EIA-derived five-year average regional capacity factors instead of seasonal capacity factors for energy-limited resources. The Commission found that a five-year average wind capacity factor derived from EIA regional data was an appropriate proxy for wind generators that do not have five years of historical data. *See Golden Spread,* 138 FERC ¶ 61,208 at P 16.

[83] *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 343.

7. Reporting of Long-Term Firm Purchases

a. Current Policy

73. In Order No. 697, the Commission stated that a seller's uncommitted capacity, as calculated in the indicative screens, is determined by adding the total nameplate or seasonal capacity of generation owned or controlled through contract and long-term firm capacity purchases, less operating reserves, native load commitments, and long-term firm sales.[84] The Commission specified that capacity associated with contracts that confer operational control of a given facility to an entity other than the owner must be assigned to the entity exercising control over that facility, rather than to the entity that is the legal owner of the facility.[85] Order No. 697 stated that if a market-based rate applicant has control over certain capacity, such that that applicant can affect the ability of the capacity to reach the market, then that capacity should be attributed to that applicant when performing the indicative screens.[86] As a result, in their initial and triennial market-based rate filings, market-based rate applicants [87] have been required to report long-term firm purchases in Row B of the indicative screens (Long-Term Firm Purchases) only if the purchase granted them control of the capacity.[88] Similarly, for purposes of reporting a change in status, market-based rate applicants have been required to report long-term firm capacity purchases when assessing their cumulative generation capacity only if such purchases confer control of such capacity to the applicant purchaser.[89]

74. This requirement also applies to long-term firm *energy* purchases to the extent that the long-term firm energy purchase would allow the purchaser to control generation capacity.[90] In this regard, in Order No. 697–B, the Commission stated that if a contract for a fixed quantity of delivered energy does not confer control, it need not be reported.[91] The Commission stated its belief at that time that a long-term firm energy purchase by itself gives the purchaser only a right to receive energy and thus no rights that would allow the purchaser to control generation capacity, and that a determination of whether a long-term firm energy purchase confers control over generation capacity must be based on a review of the totality of the circumstances on a fact-specific basis.[92] Many applicants under the market-based rate program, therefore, do not report some or all of their long-term firm power purchases (including long-term firm energy purchases) in their indicative screens if they believe these purchases do not grant them control of the capacity.

75. As explained below, we have determined, after two complete rounds of regional reviews, that the limited reporting of long-term firm purchases may create errors or misleading results in the indicative screens submitted by some sellers. These errors include incorrectly-sized markets and negative market shares for franchised public utilities and inconsistencies between the SIL values reported in the screens and the SIL values calculated for the relevant market or balancing authority area. Specifically, on numerous occasions the Commission has encountered situations where neither the seller nor the purchaser under a long-term firm power sale is being attributed with the generation capacity that is used to make that sale. This is because the seller, consistent with Commission policy, has deducted the capacity committed under the long-term firm power sale [93] for purposes of calculating that seller's uncommitted capacity, while the purchaser has used our policies (and underlying assumptions) outlined above to assume that it is also not responsible for this capacity and therefore has not included this capacity as part of the purchaser's uncommitted capacity. The combination of these actions by sellers and purchasers results in capacity under long-term firm power purchase agreements many times ''disappearing'' from the market, with neither counterparty reflecting the capacity in their screens.

76. One result of this practice is that it leads to the anomalous result in the indicative screens of some franchised public utility sellers appearing to be net short; that is, appearing to lack sufficient generation resources (both owned and purchased) to serve their peak load. In reality, franchised public utilities are required by state regulators to have sufficient generation resources (owned capacity and firm purchases) to serve their projected peak load and an additional ''planning reserve margin'' on top of that.[94] Although it is unrealistic for franchised public utilities to rely extensively on spot market purchases to serve statutory load obligations, that is what is implied in some of the indicative screens that have been submitted by franchised public utilities that do not include long-term firm purchases in their indicative screens.

77. Moreover, our experience with the horizontal market power analyses submitted subsequent to the implementation of Order No. 697 has shown us that in the typical situation, the capacity associated with a long-term firm power purchase agreement should be attributed to the purchaser, not the seller. This is because long-term firm power purchase agreements, including long-term firm energy agreements, provide the purchaser with energy that only can be interrupted for limited and specified reasons (e.g., force majeure). A firm energy sale cannot, for example, be interrupted by the seller for economic reasons. Thus, a seller must have capacity supporting a firm energy sale and this capacity is now effectively serving the purchaser, much like the purchaser's owned generation capacity.

78. As an example of this, the Commission recently addressed problems associated with the misreporting of long-term firm purchases in *Vantage Wind.*[95] In *Vantage Wind,* a non-affiliated seller prepared a horizontal market power study for a balancing authority area based on the data used by the transmission owner. However, the

[84] *Id.* P 38.

[85] *Id.* P 157.

[86] *Id.* P 174. The Commission found that determination of control is based on a review of the totality of circumstances on a fact-specific basis. *Id.*

[87] Although we generally use the term ''market-based rate sellers'' elsewhere in this NOPR, in this section we refer to such sellers as ''market-based rate applicants'' to avoid confusion when discussing sellers who are purchasers under long-term firm power purchase agreements.

[88] Reflecting this capacity in Row B has the effect of attributing the capacity to the market-based rate applicant.

[89] Order No. 697–B, FERC Stats. & Regs. ¶ 31,285 at PP 99–101.

[90] *Id.*

[91] *Id.* P 99.

[92] *Id.* P 101. In *Integrys Energy Group, Inc.,* 123 FERC ¶ 61,034 (2008), the Commission found that the sale of a ''Firm (LD)'' product, as defined in the EEI Master Power Purchase & Sale Agreement, by itself gives the purchaser only a right to receive energy and thus no rights that would allow the purchaser to control generation capacity. In reaching this determination, the Commission relied on the fact that the purchaser under a Firm (LD) product cannot force the seller to back down the output of any generator and the fact that if the purchaser refused to receive delivery, that refusal does not keep the power from entering the market because the seller has the right to resell the Firm (LD) product, as well as to receive damages from the purchaser.

[93] The EQR Data Dictionary defines a firm sale as ''a sale, service or product that is not interruptible for economic reasons.'' *See Filing Requirements for El. Utility S.A., Order Updating Electric Quarterly Report Data Dictionary,* 146 FERC ¶ 61,169, Attachment (2014) (''EQR Data Dictionary Transaction Data'' table, field number 59).

[94] *See, e.g.,* Staff of the California Public Utilities Commission with the assistance of California Energy Commission Staff, *2011 Resource Adequacy Report* (Feb. 5, 2013), *available at http://www.cpuc.ca.gov/PUC/energy/Procurement/RA/.*

[95] *Vantage Wind,* 139 FERC ¶ 61,063 at P 21.

transmission owner failed to properly account for its long-term firm purchases in its indicative screens for its home balancing authority area. The transmission owner was entitled to receive the output associated with several long-term firm power purchases, but did not report the capacity supplying these long-term firm purchases. As a result, the non-affiliated seller appeared (incorrectly) to fail the screens because the transmission owner's capacity effectively was underreported. In *Vantage Wind,* the Commission corrected for this underreporting of capacity by directing the load-serving entity purchasers to report all long-term firm purchases in Row B of the indicative screens (Long-Term Firm Purchases) if the purchase had long-term firm transmission rights associated with those resources.[96] This direction in the *Vantage Wind* order resulted in the purchasers having to include the generation capacity associated with such long-term firm purchases as part of the purchasers' capacity. Otherwise, this generation capacity would have ''disappeared'' from being evaluated under the market-based rate program. We note that in directing this outcome, the Commission did not consider the issue of who had operational control of the capacity supplying the long-term firm purchases; rather, the Commission assigned the capacity to the purchasers under the long-term firm power purchase agreement.

b. Proposal

79. For the reasons stated above, we propose to modify the policy with respect to the reporting of long-term firm purchases in the indicative screens. Specifically, we propose to require applicants under the market-based rate program to report all of their long-term firm purchases [97] of capacity and/or energy in their indicative screens and asset appendices, where the purchaser has an associated long-term firm transmission reservation, regardless of whether the seller has operational control over the generation capacity supplying the purchased power. If the long-term firm purchase involves the sale of energy, then the purchaser must convert the amount of energy to which it is entitled into an amount of generation capacity for purposes of its indicative screens and asset appendices, i.e., include the amount of the capacity as long-term firm purchases in Rows B (Long-Term Firm Purchases (from inside the study area)) or B1 (Long-Term Firm Purchases (from outside the study area)) of the proposed revised indicative screens and include it in its asset appendix. The seller under that power purchase agreement must do the same the next time it submits a market-based rate triennial or change of status filing with the Commission, i.e., convert the energy into capacity and include the amount of capacity as a long-term firm sale in Row C (Long-Term Firm Sales).[98] When making these filings, we propose that both the purchaser and the seller must show how they made the energy-to-capacity conversion. Although this attribution of capacity is the default approach that we propose as a general policy, applicants or intervenors are free to raise fact-specific circumstances that they believe may support a different attribution of capacity.

80. The intent of our proposed reform is to have an entity with market-based rate authority report all long-term firm purchases that it makes where the selling entity has a legal obligation to provide the purchaser with an energy supply that cannot be interrupted for economic reasons or at the seller's discretion. If the purchaser has contractual rights to receive the output of a long-term firm energy purchase, we propose that the amount of the capacity supplying that purchase must be reported in the purchaser's screens. We also propose to require that all such long-term firm purchases should be reported in Rows B (Long-Term Firm Purchases (from inside the study area)) or B1 (Long-Term Firm Purchases (from outside the study area)) of the proposed revised indicative screens, depending on whether the generation resource(s) supplying the sale are located inside or outside the seller's balancing authority area, as explained earlier in this proposed rule.

81. The proposal to require applicants under the market-based rate program to report all of their long-term firm purchases of capacity and/or energy in their indicative screens and asset appendices is supported based on the following considerations. First, it will size the market correctly and therefore improve the accuracy of the indicative screens, especially for franchised public utilities, whose indicative screens are used by the non-transmission owning sellers to prepare their own indicative screens. Currently, sellers often do not report some or all of their long-term firm purchases because they do not control these resources. Including all long-term firm purchases in the indicative screens will properly size the market and eliminate the unrealistic results (e.g., negative market shares) caused by the under-reporting of generation noted above.

82. Second, this proposed change will establish consistent treatment of long-term firm sales and long-term firm purchases in the indicative screens. Market-based rate applicants typically deduct long-term firm sales without making a determination as to whether those sales confer operational control to the purchaser. The Commission, in Order No. 697, did not require that sellers make such a determination before deducting the capacity supporting long-term firm sales: ''Uncommitted capacity is determined by adding the total nameplate or seasonal capacity of generation owned or controlled through contract and firm purchases, less operating reserves, native load commitments and long-term firm sales.'' [99] The Commission clarified that ''[s]ellers may deduct generation associated with their long-term firm requirements sales, unless the Commission disallows such deductions based on extraordinary circumstances.'' [100]

83. It is only on the ''buy'' side of long-term firm purchases that the Commission has considered the issue of control in reporting capacity in the screens.[101] The result is that some generation capacity sold under long-

[96] *Id.*

[97] The Commission in *Vantage Wind* directed the purchasers to report all long-term firm purchases if the purchase had long-term firm transmission rights associated with those resources. *Id.* We assume for purposes of our proposal here that all long-term firm purchases necessarily have long-term firm transmission rights associated with them. If that is not the case, as noted above, applicants or intervenors are free to raise fact-specific circumstances that they believe may support a different attribution of capacity.

[98] Our understanding is that many power purchase agreements for firm energy specify an associated capacity commitment from the seller. In cases where capacity commitments are not specified in the power purchase agreement, we propose that applicants use the following formula to convert energy to capacity (on a one-year basis): [energy (MWh)/8,760]/capacity factor = capacity (MW).

Where energy (MWh) is the total amount of energy purchased under the power purchase agreement over the calendar year; 8,760 is the total hours of a calendar year (use 8,784 in a leap year); capacity factor is actual capacity factor achieved by the unit(s) supplying the energy during the calendar year and is a measure of a generating unit's actual output over a specified period of time compared to its potential or maximum output over that same period. For example, if 700,000 MWh is the amount of firm energy purchased under a power purchase agreement during a calendar year, and the capacity factor of the generator supplying the energy is 0.8 or 80 percent, then the 700,000 MWh of energy would be converted into approximate 100 MW of capacity. That is: (700,000 MWh/8,760)/0.8 = 100 MW.

[99] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 38 (footnotes omitted).

[100] *Id.* n.18.

[101] Order No. 697–B, FERC Stats. & Regs. ¶ 31,285 at PP 99, 100.

term power purchase agreements ''disappears'' from the market because neither the seller nor the purchaser includes the capacity as part of its uncommitted capacity (i.e., the seller subtracts the amount sold under the long-term power purchase agreement from its capacity for purposes of its screens, but sometimes the purchaser does not add the corresponding amount to its capacity for purposes of its screens). It is inevitable that some generation capacity will be excluded from the indicative screens, with resulting errors in market shares and overall market size, when differing standards are applied to long-term firm purchases and long-term firm sales with respect to the allocation of such capacity. This proposal will make those standards consistent, reducing such errors.

84. Third, requiring the reporting of all long-term firm power purchases also will ensure consistent treatment of owned or installed capacity and long-term firm purchases in the indicative screens. The Commission's horizontal market power analysis implicitly assumes that applicants control all of their owned or installed capacity listed in their indicative screens but this is not necessarily the case.[102] For example, in situations where an applicant is a minority owner of a jointly-owned generating unit, it is quite possible that the applicant will not have operational control (i.e., commitment and dispatch authority) over the unit.[103] However, applicants typically include all of their owned or controlled generation capacity in the indicative screens regardless of whether they actually control the commitment and dispatch of this capacity. Accordingly, we propose that an applicant with long-term firm purchases treat such contracted-for capacity in a similar manner to an applicant that owns capacity; that is, such purchases should be included in the applicant's portfolio of generation for the indicative screens.

85. Finally, for those applicants incorrectly reporting long-term firm power purchases in the wrong row of the indicative screens, uniform reporting of these purchases will also help to ensure consistency between the SIL values reported in the screens and the Commission's accepted SIL values for the relevant market or balancing authority area. As the Commission noted in *Vantage Wind,*[104] improperly classifying long-term firm purchases (or imports of remotely-owned installed capacity) as Imported Power in the existing screens (Row D of the pivotal supplier screen and Row E of the market share screen) may lead to an overstatement of the market's SIL values. This is because the sum of the values in the existing pivotal supplier screen for Seller and Affiliate Imported Power shown in Row D and Non-Affiliate Imported Power shown in Row H should be less than or equal to the Commission-accepted SIL values. All Commission-accepted SIL values account for (i.e., subtract) long-term transmission reservations into the study area, so that they reflect the transmission capability available to competing sellers after accounting for the capability that the local utility has reserved for its own use to import power from remote resources. Thus, classifying long-term firm purchases as Imported Power effectively ''double counts'' import capability in the screens because it adds back the import capability associated with long-term firm purchases and assumes that this capability is available to potential competitors. This problem does not arise if long-term firm purchases (and imports of remotely-owned installed capacity) are properly classified in the indicative screens as Long-Term Firm Purchases (Rows B1 and F1 in the proposed screen format for the pivotal screen) and Remote Capacity (Rows A1 and E1 in the proposed screen format for the pivotal screen), respectively. This proposal is intended to help clarify how to classify imports of firm power and remotely-owned capacity. These proposed changes to the pivotal supplier screen format are also being proposed for the market-share screen.

86. We seek comment on this proposal.

B. Vertical Market Power—Land Acquisition Reporting

1. Current Policy

87. All market-based rate sellers are currently required, pursuant to § 35.42(d) of the Commission's regulations and Order Nos. 697–C and 697–D, to file notices of change in status on a quarterly basis when they acquire sites for new generation capacity development.[105] To date, not a single protest has been filed in response to these copious filings and the Commission has not uncovered any issues indicating that a particular seller has erected a barrier to entry as a result of its land acquisition. On a number of occasions over the years, market-based rate sellers have expressed frustration with this reporting requirement and have described it as burdensome.

88. In Order No. 697, the Commission stated it would consider a seller's ability to erect other barriers to entry as part of the vertical market power analysis. Thus, the regulations require that a seller provide a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, intrastate natural gas storage or distribution facilities, sites for generation capacity development, and physical coal supply sources and ownership or control over who may access transportation of coal supplies.[106] The Commission noted that, to date, it had not found such ownership or control to be a potential barrier to entry warranting further analysis, but that it did not have sufficient evidence to remove these inputs from the analysis entirely. Thus, it rebuttably presumed that ownership or control of or affiliation with an entity that owns or controls such facilities does not allow a seller to raise entry barriers, but would allow intervenors to demonstrate otherwise.[107] In Order No. 697–C, the Commission noted that ''[o]ne of the purposes of the change of status reporting requirement is to provide interested parties the opportunity to intervene and comment if they believe the seller's acquisition of sites for new generation capacity

[102] In Order No. 697, the Commission noted that its historical approach has been that the owner of a facility is presumed to have control of the facility unless such control has been transferred to another party by virtue of a contractual agreement. The Commission stated that it would continue its practice of assigning control to the owner absent a contractual agreement transferring such control. Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 183.

[103] Another example is when a generator confers operational control to a third party through a long-term tolling agreement. *See, e.g., Shell Energy North America (US),* L.P., 135 FERC ¶ 61,090, at P 3 (2011).

[104] *Vantage Wind,* 139 FERC ¶ 61,063 at P 16 (''In its updated market power analysis, Puget accounted for both its remote generation from its Colstrip plant located in Montana and its firm power purchase agreements from Bonneville as Imported Power (Line D of the market share screen and the pivotal supplier screen) rather than as Installed Capacity (Line A of the market share screen and the pivotal supplier screen) or a Long-term Firm Purchase (Line B of the market share screen and the pivotal supplier screen), respectively. Consequently, the total SIL shown in Puget's screens exceeded the net SIL value for the Puget balancing authority area as accepted by the Commission in [*Puget Sound Energy, Inc.,* 135 FERC ¶ 61,254 (2011)]. When Vantage Wind applied the Commission-approved SIL values to its analysis without making any other adjustments to Puget's screens, Vantage Wind appeared to fail the screens because Puget's capacity was underreported.'').

[105] Order No. 697–C, FERC Stats. & Regs. ¶ 31,291 at PP 18–19; Order No. 697–D FERC Stats. & Regs. ¶ 31,305 at PP 21–23.

[106] 18 CFR 35.37(e).

[107] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 446.

development creates a barrier to entry.'' [108]

2. Proposal

89. We propose to relieve market-based rate sellers of their obligation to file quarterly land acquisition reports and of the obligation to provide information on sites for generation capacity development in market-based rate applications and triennial updated market power analyses because the burden of such reporting outweighs the benefits.[109]

90. In the more than six years since issuance of Order No. 697, intervenors have not challenged whether sites for new generation capacity development created a barrier to entry. For this reason, we propose to eliminate the requirement to provide such information. We note that, if there is a concern that a particular seller's sites for generation capacity development may be creating a barrier to entry, the Commission can request additional information from the seller at any time.[110]

91. Thus, we propose to revise the regulations at 18 CFR 35.42 to remove paragraph (d). This proposed revision removes the requirement that sellers report the acquisition of control of a site or sites for new generation capacity development for which site control has been demonstrated. Likewise, we propose to revise the regulations at 18 CFR 35.42 to remove paragraph (e), which pertains to the definition of site control for purposes of paragraph (d). We also propose to revise the regulations at 18 CFR 35.37 to remove paragraph (e)(2), which requires sellers to provide information regarding sites for generation capacity development to demonstrate a lack of vertical market power. Therefore, under this proposal, § 35.42(d)–(e) and § 35.37(e)(2) would be removed entirely. In addition, we propose to revise 18 CFR 35.42 at paragraph (b) to remove the reference to the reporting of acquisition of control of a site or sites for new generation capacity development. Specifically, under this proposal, § 35.42(b) would read as follows: Any change in status subject to paragraph (a) of this section, (*proposing to delete)* [other than a change in status submitted to report the acquisition of control of a site or sites for new generation capacity development], must be filed no later than 30 days after the change in status occurs. Power sales contracts with future delivery are reportable 30 days after the physical delivery has begun. Failure to timely file a change in status report constitutes a tariff violation.

92. We seek comment on these proposals.

C. Notices of Change in Status

93. Section 35.42(a) of the Commission's regulations requires sellers to report any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.[111] A change in status filing is required when, among other things, either of two conditions are met:

(1) Ownership or control of generation capacity results in net increases of 100 MW or more; [[112]] or

(2) affiliation with any entity not disclosed in the application for market-based rate authority that (a) owns or controls generation facilities or inputs to electric power production, (b) owns, operates or controls transmission facilities, or (c) has a franchised service area. [[113]]

1. Geographic Focus

a. Current Policy

94. In Order No. 697–A, the Commission clarified that sellers must report a change in status when they acquire 100 MW or more in the ''geographic market that was the subject of the horizontal market power analysis on which the Commission relied in granting the seller market-based rate authority.'' [114]

95. Order No. 697–A also provided an example of when a seller should not file a notice of change in status: ''if a seller has a net increase of 50 MW in the geographic market on which the Commission relied in granting the seller market-based rate authority and a 50 MW increase in a different geographic market that is in the same region as defined by Appendix D of Order No. 697, the 100 MW or more threshold would not be met because the increase in generation capacity is less than [100] MW in each generation market and, accordingly, a change in status filing would not be required.'' [115]

b. Proposal

96. We propose to clarify that the 100 MW reporting threshold in § 35.42(a)(1) is not limited only to markets previously studied. That is, if a seller acquires generation that would cause a cumulative net increase of 100 MW or more in any relevant geographic market (including generation in both the relevant geographic market itself and any first-tier/interconnected market with the potential to import into that market) since the seller's most recent triennial updated market power analysis or change in status filing, the seller must make a change in status filing. This would include cumulative increases of 100 MW or more in a new market that has not previously been studied because, once the seller has generation in that market, it is a relevant geographic market for that seller. We clarify that a net increase measures the difference between increases and decreases in affiliated generation. We further clarify that the example cited above from Order No. 697–A described a situation where the geographic market on which the Commission relied was not first-tier to the geographic market in which the seller acquired an additional 50 MW. Thus, we propose to clarify that the 100 MW threshold applies to the cumulative capacity added in any relevant geographic market, including what can be imported from first-tier markets, but does not cover situations where a seller acquires less than 100 MW in one market and less than 100 MW in another market, as long as those two markets are not first-tier to each other. We further propose to require that the 100 MW threshold requirement for change in status filings be calculated based on a generator's nameplate capacity rating because it is a single value, it exists for all types of generators, it is generally a more conservative value than a seasonal or five-year average rating would be, and it allows for uniform measurements across different types of generators.

97. Therefore, we propose to revise the regulatory text in § 35.42(a)(1) of the Commission's regulations to provide greater clarity and direction on this topic as follows: Ownership or control of generation capacity that results in *cumulative* net increases *(i.e., the difference between increases and*

[108] Order No. 697–C, FERC Stats. & Regs. ¶ 31,291 at P 17.

[109] For an example of the burden, the Commission received, in the most recent seven quarters, 90 filings from 1,380 filers. This is a reporting burden on the sellers and an inefficient use of Commission resources for information that has yet to produce an actionable item or elicit a single comment in almost five years. All 1,380 filers had to be listed in the notices and in the orders accepting the filings. Staff has written and issued seven orders accepting these filings, one order for each of the last seven quarters.

[110] *See* Order No. 697–D, FERC Stats. & Regs. ¶ 31,305 at P 23 (''[I]f there is a concern that a particular seller may be acquiring land for the purpose of preventing new generation capacity from being developed on that land, the Commission can request additional information from the seller at any time.'').

[111] 18 CFR 35.42(a).

[112] 18 CFR 35.42(a)(1).

[113] 18 CFR 35.42(a)(2).

[114] Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 512.

[115] *Id.* We note that the original text in Order No. 697–A stated ''the increase in generation is less than 50 MW in each generation market.'' However, it should have stated ''the increase in generation is less than 100 MW in each generation market.''

decreases in affiliated generation capacity) of 100 MW or more *of nameplate capacity in any relevant geographic market (including generation in the relevant geographic market and generation in any markets that are first tier to the relevant geographic market),* or of inputs to electric power production, or ownership, operation or control of transmission facilities, or

98. We seek comment on these proposals.

2. Long-Term Contracts

a. Current Policy

99. As noted above, sellers are currently required to report ownership or control of generation capacity that results in net increases of 100 MW or more but are not required to report contracts that do not convey ownership or control of generation capacity.[116]

b. Proposal

100. As discussed above, we propose to require sellers to report all long-term firm purchases of capacity and/or energy in their indicative screens, regardless of whether the seller has acquired control over the generation capacity supplying the power. The change in status reporting requirement in § 35.42 seeks to provide a timely report of ''any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.'' [117] We propose above to require reporting of long-term firm purchases in the indicative screens; such purchases will be relied upon in granting market-based rate authority. Therefore, in addition to the revisions proposed above, we propose to include such contracts when determining the 100 MW threshold and propose to revise the beginning of § 35.42(a)(1) of the Commission's regulations as follows: Ownership or control of generation capacity *or long-term firm purchases of capacity and/or energy* that results in net increases . . .[118]

101. We seek comment on this proposal.

3. New Affiliation and Behind-the-Meter Generation

a. Current Policy

102. Market-based rate sellers are required to make a change in status filing when they become affiliated with entities that: (1) Own or control generation; (2) own or control inputs to electric power production (e.g., intrastate natural gas transportation, storage, or distribution facilities); (3) own, operate or control transmission facilities; or (4) have a franchised service territory.[118] Currently, the 100 MW threshold for reporting increases in generation contained in § 35.42(a)(1) of the Commission's regulations does not apply to the requirement to report a new affiliation found in § 35.42(a)(2) of the Commission's regulations because the existing language in § 35.42(a)(2) does not reference the 100 MW threshold. As a result, § 35.42(a)(2) requires a change in status filing for *any* new affiliation, regardless of the amount of generation owned or controlled by the new affiliate.

103. In addition, the regulatory text states that a change in status filing is required for any new affiliate that owns or controls generation facilities, without regard to the size, type or characteristics of those facilities.[119] The Commission's experience is that some sellers are unsure if they should report new affiliates that own certain facilities such as qualifying facilities that are exempt from FPA section 205 [120] and behind-the-meter facilities.

104. Finally, the Commission's experience is that some sellers report the new acquisition or new affiliation in the text of their change in status filings but do not include the generation in the asset appendix, especially when it is behind-the-meter generation.

b. Proposal

105. We propose to revise the change in status regulations to include a 100 MW threshold for reporting new affiliations. That is, a market-based rate seller that has a new affiliation would not be required to file a change in status until its new affiliations result in a cumulative net increase of 100 MW or more of nameplate capacity in any relevant geographic market (including generation in both the relevant geographic market itself and any first-tier/interconnected market). As noted above, the Commission adopted a 100 MW threshold for reporting new generation, finding that a minimum reporting threshold strikes the proper balance between the Commission's duty to ensure that market-based rates are just and reasonable and the Commission's desire not to impose an undue regulatory burden on market-based rate sellers.[121] Similarly, we believe that applying the 100 MW threshold to new affiliations would ease the reporting burden on sellers without diminishing the Commission's ability to identify possible market power. Therefore, we propose to revise § 35.42(a)(2) of the Commission's regulations to read as follows:

Affiliation with any entity not disclosed in the application for market-based rate authority that*:* (i) (*proposing to delete*)[~~o~~]Owns or controls generation facilities *or has long-term firm purchases of capacity and/or energy that results in cumulative net increases (i.e., the difference between increases and decreases in affiliated generation capacity) of 100 MW or more of nameplate capacity in any relevant geographic market (including generation in the relevant geographic market(s) and generation in any markets that are first tier to the relevant geographic market(s)); (ii) Owns or controls* inputs to electric power production*:* ~~,~~ *(iii)* (*proposing to delete*)[affiliation with any entity not disclosed in the application for market-based rate authority that o]*O*wns, operates or controls transmission facilities*;*, or *(iv)* (*proposing to delete*)[affiliation with any entity that h]*H*as a franchised service area.

106. We further clarify that the requirement to submit a notice of change in status to report affiliation with new generation, transmission, or intrastate gas pipelines includes reporting that asset in the seller's appendix. We propose to amend the regulation to clarify that sellers must include all new affiliates and any assets owned or controlled by the new affiliates in the asset appendix. We propose to revise § 35.42(c) of the Commission's regulations as follows: When submitting a change in status notification regarding a change that impacts the pertinent assets held by a Seller or its affiliates with market-based rate authorization, a Seller must include an appendix of *all* assets*, including the new assets and/or affiliates reported in the change in status,* in the form provided in Appendix B of this subpart.

107. We further clarify that ''all assets'' include behind-the-meter generation and qualifying facilities.[122]

[116] *See* 18 CFR 35.42(a)(1).

[117] 18 CFR 35.42(a).

[118] 18 CFR 35.42(a)(2).

[119] *See id.*

[120] Sales of energy or capacity made by qualifying facilities 20 MW or smaller are exempt from section 205. Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 525; 18 CFR 292.601(c)(1).

[121] *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority,* Order No. 652, FERC Stats. & Regs. ¶ 31,175, at P 68, *order on reh'g,* 111 FERC ¶ 61,413 (2005).

[122] Accordingly, the appendix must list all generation assets owned (clearly identifying which affiliate owns which asset) or controlled (clearly identifying which affiliate controls which asset) by

Continued

However, we propose to allow sellers to aggregate their behind-the-meter generation by balancing authority area or market into one line on the list of generation assets. Similarly, we propose to allow sellers to aggregate their qualifying facilities under 20 MW by balancing authority area or market into one line on the list of generation assets.

108. We also clarify that sellers should include these assets in their indicative screens, as well as in their asset appendix. Sellers should also include this generation when calculating the 100 MW change in status threshold and the 500 MW Category 1 threshold.

109. We seek comment on these proposals.

D. Asset Appendix

1. Current Policy

110. Order No. 697 requires that market-based rate sellers include with each new application, market power analysis, and relevant change in status notification an asset appendix that lists all affiliates that have market-based rate authority and identifies any assets owned or controlled by the seller and any such affiliate.[123] The asset appendix includes two lists of assets. One list contains market-based rate affiliates and generation assets and the other list contains electric transmission and intrastate natural gas assets. The appendix must list all generation assets owned or controlled by the corporate family, and each asset's balancing authority area (clearly identifying which affiliate owns or controls which asset), geographic region, in-service date, and nameplate and/or seasonal ratings.[124] The transmission list of assets must reflect all electric transmission and natural gas intrastate pipelines and/or gas storage facilities owned or controlled by the corporate family and the location of such facilities.[125] The Commission requires the appendix of assets to be included in the form provided in Appendix B to Subpart H of Part 35 of the Commission's regulations, and provides an example of the required appendix on its Web site.[126]

2. Proposal

111. As detailed below, we propose clarifications and revisions to the required appendix that contains the lists of assets.

a. Changes to the Existing Columns

112. We propose to make three changes to the existing columns in the asset appendix. We propose to change the column headings on both lists of assets from ''Balancing Authority Area'' to ''Market/Balancing Authority Area'' to reflect the correct location for assets in organized markets as well as in balancing authority areas. The second proposal is to change the column headings on both lists of assets from ''Geographic Region (per Appendix D)'' to ''Geographic Region'' because there have been changes to some sellers' regions since the Commission originally published the region map in Appendix D of Order No. 697. Finally, we propose to change the heading for the ''Nameplate and/or Seasonal Rating'' column to ''Capacity Rating (MW): Nameplate, Seasonal, or Five-Year Average'' to clarify that this column requires capacity ratings in megawatts and to reflect that each submission of the asset appendix should use either ''nameplate,'' ''seasonal,'' or five-year average rating to reflect the rating used throughout the filing for a particular generation technology. These proposed changes will ensure consistency across filings and allow the industry and Commission staff to better utilize the information contained in the lists of assets.

113. Thus, we propose to modify the example of the required appendix found in Appendix B to Subpart H of Part 35 of the Commission's regulations to incorporate these changes.[127]

114. We seek comment on these proposed changes.

b. Clarifications Regarding the Existing Columns

115. The Commission's post-Order No. 697 experience has been that, with respect to the currently labeled ''Nameplate and/or Seasonal Rating'' column in the list of generation assets, some sellers report *only* the portion of the capacity that they own,[128] whereas other sellers report the entire capacity of the facility. Additionally, some sellers include in their asset lists generation facilities in which they have claimed a familial relationship through only passive, non-controlling interests.

116. We propose to clarify that, for the list of assets: (1) A seller must enter the entire amount of a generator's capacity (in MWs) in the ''Capacity Rating (MW): Nameplate, Seasonal, or Five-Year Average'' column even if the seller only owns part of a facility; (2) a seller should list only one of the following as a ''Use'' in the ''Asset Name and Use'' column: Transmission, intrastate natural gas storage, intrastate natural gas transportation, or intrastate natural gas distribution; (3) entities and generation assets in which passive ownership interests have been claimed should not be included in the horizontal market power indicative screens or reported in the appendix.[129] If a seller does not believe that the entire capacity of a generation facility should be included in its indicative screens, it may explain its position in the transmittal letter filed with its horizontal market power screens, including letters of concurrence where appropriate,[130] and thus account for only its portion of that particular generation facility in the indicative screens. However, the entire capacity of the facility should be reflected in the list of generation assets in the appendix. We note that generating units within a single plant may be aggregated in a single row if the information in the other columns is the same for all units, but separate plants cannot be aggregated in a single row, except for behind-the-meter generation, and qualifying facilities less than 20 MW, as proposed above. We further clarify that each asset should be listed only once; if it is owned by more than one affiliate, all affiliate names should be included in the ''Owned By'' column. If a company or an affiliate is registered in the Commission's company registration database,[131] we propose to clarify that the name in the asset appendix for that

the corporate family by balancing authority area, and by geographic region, and provide the in-service date and nameplate or seasonal ratings by unit. As a general rule, any generation assets included in a seller's market study should be listed in the asset appendix. Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 895.

[123] *Id.* P 894.

[124] *Id.* P 895.

[125] *Id.*

[126] The sample asset appendix can be found on the Commission's Web site at *http://www.ferc.gov/industries/electric/gen-info/mbr/appendix.pdf.*

[127] *See* Appendix B herein for an example of the proposed revised appendix.

[128] We note that the Commission has not permitted market-based rate sellers to dilute the ownership share of generation attributed to the seller or its affiliates based on multiplying successive shares of partial ownership in a company. *See Kansas Energy LLC,* 138 FERC ¶ 61,107, at P 28 (2012). Instead, sellers must account for generation capacity owned or controlled by the seller and its affiliates for purposes of analyzing horizontal market power. *See id.* P 37.

[129] We note that sellers must demonstrate why such ownership interests should be deemed passive. *See AES Creative Resources, L.P.,* 129 FERC ¶ 61,239 (2009).

[130] *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 187.

[131] The term ''company registration database'' here refers to ''FERC's Online Company Registration application'' (*see http://www.ferc.gov/docs-filing/etariff/implementation-guide.pdf*). However, Commission orders have referred to this database as we have also issued orders referring to it as ''Company Registration,'' (*see Filing Via the Internet, Revisions to Company Registration and Establishing Technical Conference,* 142 FERC ¶ 61,097 (2013)) or ''Company Registration system'' (*see Order Updating Electric Quarterly Report Data Dictionary,* 146 FERC ¶ 61,169 (2014)).

company must appear exactly the same as in the registration database.

117. With respect to the ''Date Control Transferred'' column in both the generation and transmission asset lists, we clarify that the ''Date Control Transferred'' column should identify the date on which a contract that transfers control over a facility becomes effective. Where appropriate, companies may enter ''N/A'' in this field to indicate that it is not applicable to their asset(s).

118. With respect to the ''Size'' column in the list of transmission assets, we propose to clarify that the ''Size'' refers to both the length of the transmission line (i.e., feet or miles) and the capability of the line in voltage (kV). We note that companies can aggregate their transmission assets by voltage. For instance, a utility that owns a transmission system with several hundred transmission lines might include two rows in the transmission asset list; one row with 200 miles of 138 kV lines listed in the ''Size'' column and another row with 100 miles of 230 kV lines listed in the ''Size'' column as long as all the other columns (e.g., owned by, controlled by, balancing authority area, geographic region, etc.) remain the same for all assets aggregated in that row. The name for such aggregated facilities should describe the lines that are being aggregated, e.g., ''230 kV transmission lines.''

119. We seek comment on these proposals.

c. Changes Regarding OATT Waiver and Citations in Transmission Assets

120. The Commission has stated that even if a seller has been granted waiver of the requirement to file an OATT, those transmission facilities should be reported in its asset appendix,[132] and we believe that this should be reiterated and clarified going forward. Therefore, we propose to require any seller that has been granted waiver of the requirement to file an OATT for its facilities [133] to report in its list of transmission assets the citation to the Commission order granting the OATT waiver for those facilities. We propose to modify the example of the asset appendix found in Appendix B to Subpart H of Part 35 of the Commission's regulations to add a new column in the list of transmission assets for the citation to the Commission order accepting the OATT or granting waiver of the OATT requirement. This will make the list of transmission assets consistent with the list of generation assets, which already contains a column for the docket number in which market-based rate authority was granted, and will provide a more complete list of transmission assets to the Commission and the public. Providing the citation to the Commission order accepting the OATT or granting waiver of the OATT requirement in the list of transmission assets will facilitate the Commission's and market participants' verification that sellers were granted the appropriate authorizations.

121. We seek comment on these proposed changes.

d. Electronic Format

122. Currently, virtually all of the asset lists are submitted to the Commission using PDF format. Staff is unable to perform calculations on PDF files, or to search, or sort the data contained in the lists of assets. Staff therefore frequently transfers the information included in the lists of assets into spreadsheets for sorting, comparison purposes, and internal calculations, and has found numerous submission errors from sellers. If the Commission provided a sample electronic spreadsheet and required sellers to submit the lists of assets in an electronic spreadsheet, it would reduce filing burdens, improve accuracy, decrease the number of staff inquiries to sellers regarding submission errors, and result in a more efficient use of resources.

123. Therefore, we propose to require market-based rate sellers to submit the Appendix B asset lists in an electronic spreadsheet format that can be searched, sorted, and otherwise accessed using electronic tools. We propose to post on the Commission's Web site sample lists of assets in formatted electronic spreadsheets and to require sellers to submit all required appendices in the form and format of the sample electronic spreadsheets.[134]

124. We further propose to clarify that the lists of assets should not contain any information other than what is required in the respective columns. For instance, sellers frequently include footnotes in their appendices that cause the appendices to become unwieldy and difficult to read or understand. Sellers sometimes explain in these footnotes that some facilities are partially owned, that some affiliates included in their lists may not actually be affiliates but are included out of an abundance of caution, or that a facility is expected to come on-line or off-line at some future date. We discourage any such footnotes and direct that any such representations be made in the filing transmittal letter.

125. An example of the electronic spreadsheet for the appendix with the new columns and column headings is included as Appendix B herein.

e. Database

126. As noted above, we propose to require market-based rate sellers to submit their lists of assets in an electronic spreadsheet that can be searched, sorted, and otherwise accessed using electronic tools. In addition, we seek comment whether in the future it would be beneficial to develop a comprehensive searchable public database of the information contained in the asset appendices, which would eventually replace the pre-formatted spreadsheet. Such an approach would allow market-based rate sellers to update their asset appendices when circumstances change. We seek input regarding whether such a database would be useful, how the database might be created, standardized and maintained, and the frequency with which it should be updated. We further seek input on the usefulness of including unique identifiers for the affiliate companies and generation assets in such a database, e.g., the Company Registration database and the EIA Power Plant Code and Generator ID, respectively, where those IDs exist. We also seek input on the difficulty of reporting and the usefulness of including in such a database the percentage each affiliate owns of each of its assets.

127. We seek comment on these proposals.

E. Category 1 and Category 2 Sellers

1. Current Policy

128. In Order No. 697, the Commission created a category of market-based rate sellers (Category 1 sellers) that are exempt from the requirement to automatically submit updated market power analyses. Category 1 sellers include wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per

[132] ''We clarify that the transmission facilities that we require to be included in that asset appendix are limited to those the ownership or control of which would require an entity to have an OATT on file with the Commission (even if the Commission has waived the OATT requirement for a particular seller).'' Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 378.

[133] *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

[134] If a seller chooses to create its own workable electronic spreadsheet, the file it submits must have the same format as the sample spreadsheet on the Commission Web site. Specifically, it must have the same exact columns and descriptive text as the sample spreadsheet. The file must be submitted in one of the spreadsheet file formats accepted by the Commission for electronic filing. *See* FERC, Acceptable File Formats (January 2012), *available at http://www.ferc.gov/docs-filing/elibrary/accept-file-formats.asp.*

region;[135] that do not own, operate or control transmission facilities other than limited equipment necessary to connect individual generating facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888); that are not affiliated with anyone that owns, operates or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power issues.[136] Category 2 sellers (those market-based rate sellers that do not qualify as Category 1 sellers) are required to file regularly scheduled updated market power analyses.[137]

129. In practice, the criteria for Category 1 seller status have been applied differently in the case of power marketers (i.e., a seller that does not own generation or transmission) and power producers (i.e., a seller with generation assets).[138] The seller category status for a power marketer is determined by considering all affiliated generation and transmission, while power producers owning generation or transmission assets only have to consider affiliated generation if it is located in the same region as the power producer's generation assets.

2. Proposal

130. We propose to clarify the distinction in determining the seller category status of power marketers and power producers.[139] For purposes of determining seller category status for each region, a power marketer should include all affiliated generation capacity in that region. Power producers only need to include affiliated generation that is located in the same region as the power producer's generation assets. The reason behind this distinction is that a power marketer with no generation assets in the ground is assumed to have no home market; it is thus assumed to be equally likely to make sales in any region. However, although a power producer has authorization to make sales in other regions, it is assumed that the majority of its sales will be in the region(s) in which it owns generation assets.

131. Thus, we propose to clarify that a power marketer with no generation assets may qualify as a Category 1 seller in any region where: (1) Its affiliates own or control, in aggregate, 500 MW or less of generation capacity; (2) it is not affiliated with anyone that owns, operates or controls transmission facilities; (3) it is not affiliated with a franchised public utility; and (4) it does not raise other vertical market power issues. In addition, for any region where the power marketer's affiliates are designated as Category 2 sellers, it is Commission practice that the power marketer is also a Category 2 seller. We note that the above is consistent with the way in which the Commission has viewed power marketers since the issuance of Order No. 697.

132. We also propose to clarify that a power producer may qualify as a Category 1 seller in any region in which the power producer itself owns generation and the power producer and its affiliates own or control, in aggregate, 500 MW of generation capacity or less, as long as the power producer is not affiliated with anyone that owns, operates or controls transmission facilities in that region, is not affiliated with a franchised public utility in that region, and does not raise other vertical market power issues. In addition, unlike power marketers, a power producer may qualify as a Category 1 seller in a region where the power producer itself does not own or control any generation or transmission assets but where it has affiliates that are Category 2 sellers.[140]

133. Therefore, we propose to revise the regulations to clarify that to qualify for Category 1 status, a seller must meet *all* of the requirements. Failure to satisfy *any* of these requirements results in a Category 2 designation. The proposed change of the text of 18 CFR 35.36(a)(2) is: *A Category 1 Seller* means *a Seller that:*

(i) Is either a wholesale power marketer(proposing to delete)[s] *that controls or is affiliated with500 MW or less of generation in aggregate per region or a* wholesale power producers that own*s,* (proposing to delete)[or] control*s or is affiliated with* 500 MW or less of generation in aggregate *in the same region as its generation assets;*

(ii) (proposing to delete)[that do] *Does* not own, operate or control transmission facilities other than limited equipment necessary to connect individual generating facilities to the transmission grid (or *has* (proposing to delete)[have] been granted waiver of the requirements of Order No. 888, FERC Stats. & Regs. ¶ 31,036);

(iii) (proposing to delete)[that are] *Is* not affiliated with anyone that owns, operates or controls transmission facilities in the same region as the *S*eller's generation assets;

(iv) (proposing to delete)[that are] *Is* not affiliated with a franchised public utility in the same region as the *S(proposing to delete)*[s]eller's generation assets; and

(v) (proposing to delete)[that do] *Does* not raise other vertical market power issues.

134. We seek comment on this proposal.

F. Corporate Families

1. Corporate Organizational Charts

a. Current Policy

135. The Commission currently requires new and existing market-based rate sellers to provide written descriptions of their affiliates and corporate structure or upstream ownership for initial applications for market-based rate authority, updated market power analyses and notices of change in status as a result of new affiliations. In Order No. 697–A, the Commission stated:

> A seller seeking market-based rate authority must provide information regarding its affiliates and its corporate structure or upstream ownership. To the extent that a seller's owners are themselves owned by others, the seller seeking to obtain or retain market-based rate authority must identify those upstream owners. Sellers must trace upstream ownership until all upstream

[135] In Order No. 697, the Commission adopted a regional schedule for the submission of updated market power analyses based on the balancing authority area in which the seller owns or controls generation. The Commission established the following six geographic regions: Northeast, Southeast, Central, Southwest Power Pool, Southwest, and Northwest. Order No. 697, FERC Stats. & Regs. ¶ 31,252 at Appendix D. We provide an updated region map as Appendix D of this NOPR.

[136] *See id.* PP 848–849 n.1000; *see also* 18 CFR 35.36(a)(2), 35.37(a)(1).

[137] 18 CFR 35.36(a)(3), 35.37(a)(1).

[138] The distinction between the category status of power marketers and power producers was previously articulated in the March 2010 market-based rate technical conference. *FERC, Technical Conference on Preparation of Market-Based Rate Filings Quarterly Reports by Public Utilities,* Docket No. AD10–4–000 (2010), *available at https://www.ferc.gov/EventCalendar/EventDetails.aspx?ID=5089&CalType=%20&CalendarID=116&Date=03/03/2010&View=Listview*).

[139] The Commission regulations define Category 1 sellers as ''wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate or control transmission facilities other than limited equipment necessary to connect individual generating facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888, FERC Stats. & Regs. ¶ 31,036); that are not affiliated with anyone that owns, operates or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power issues.'' 18 CFR 35.36(a)(2).

[140] We note that a mitigated seller cannot use an affiliated power producer in another region as a conduit to sell in a mitigated balancing authority area because all affiliates of a mitigated seller are prohibited from selling at market-based rates in any balancing authority area or market where the seller is mitigated. Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 335.

owners are identified. Sellers must also identify all affiliates. Finally, an entity seeking market-based rate authority must describe the business activities of its owners, stating whether they are in any way involved in the energy industry.[[141]]

b. Proposal

136. We propose to require sellers to provide an organizational chart, in addition to written descriptions of their affiliates and corporate structure or upstream ownership, for initial applications for market-based rate authority, updated market power analyses and notices of change in status reporting new affiliations.

137. The Commission has seen increasingly complex organizational structures as private equity funds and other financial institutions take ownership positions in generation and utilities. The Commission believes that requiring the filing of an organizational chart for initial applications for market-based rate authority, updated market power analyses and notices of change in status reporting new affiliations would make reviewing market-based rate filings more efficient, increase transparency, and synchronize information about corporate structure that the Commission receives from sellers with market-based rate authority with similar information that the Commission receives under section 203 of the FPA.[142] We propose to require from market-based rate sellers an organizational chart similar to that which the Commission requires from section 203 applicants. Specifically, § 33.2(c)(3) of the Commission's regulations [143] provides that section 203 applicants must include: a description of the applicant, including, among other things, ''[o]rganizational charts depicting the applicant's current and proposed post-transaction corporate structures (including any pending authorized but not implemented changes) indicating all parent companies, energy subsidiaries and energy affiliates unless the applicant demonstrates that the proposed transaction does not affect the corporate structure of any party to the transaction.'' We propose that market-based rate sellers be required to provide written descriptions of their affiliates and corporate structure or upstream ownership and an organizational chart depicting the market-based rate seller's current corporate structures (including any pending authorized but not implemented changes) indicating all upstream owners, energy subsidiaries and energy affiliates. We believe that the increased burden on market-based rate sellers is minimal as most sellers have this organizational chart available.

138. Thus, we propose to revise the regulatory text in § 35.37(a)(2) of the Commission's regulations as follows: When submitting a market power analysis, whether as part of an initial application or an update, a Seller must include an appendix of assets, in the form provided in Appendix B of this subpart, *written descriptions of their affiliates and corporate structure or upstream ownership, and an organizational chart. The organizational chart must depict the Seller's current corporate structure indicating all upstream owners, energy subsidiaries and energy affiliates.*

139. We also propose that such organizational chart be required for any notice of change in status involving a change in the ownership structure that was in place the last time the seller made a market-based rate filing with the Commission. Therefore, we propose to revise the regulatory text in § 35.42(c) of the Commission's regulations as follows: When submitting a change in status notification regarding a change that impacts the pertinent assets held by a Seller or its affiliates with market-based rate authorization, a Seller must include an appendix of assets in the form provided in Appendix B of this subpart, *written descriptions of their affiliates and corporate structure or upstream ownership, and an organizational chart. The organizational chart must depict the Seller's prior and new corporate structures indicating all upstream owners, energy subsidiaries and energy affiliates unless the Seller demonstrates that the change in status does not affect the corporate structure and the Seller's affiliations.[144]*

140. We seek comment on these proposals.

2. Single Corporate Tariff

a. Current Policy

141. Joint tariffs may be used when a corporate family has more than one affiliated seller with market-based rate authority.[145] Joint tariffs allow corporate families to more clearly organize their tariff records and simplify their tariff filings. The Commission explained in Order No. 714 that joint filers are permitted to designate one market-based rate seller (the designated filer) to file a single tariff (joint master corporate tariff) for inclusion in the Commission's eTariff database that reflects the joint tariff for itself and all affiliated sellers.[146] The Commission further explained that all affiliated sellers (i.e., the non-designated joint filers) would include in their respective tariff filings a tariff section consisting of a single page or section that would provide the appropriate name of the tariff and the identity of the designated filer for the joint tariff. In this way, non-designated filers incorporate by reference the joint master corporate tariff submitted by the designated filer, and staff and the general public are able to find quickly the appropriate joint master corporate market-based rate tariff in the Commission's eTariff database.

142. Several corporate families have successfully submitted a joint master corporate market-based rate tariff; however, others have experienced technical and non-technical difficulties when filing their tariff records into the Commission's electronic tariff database. Other corporate families continue to maintain their market-based rate tariffs separately. Having a joint master corporate market-based rate tariff eases the regulatory burden on corporate families because only the designated filer is required to submit tariff revisions, such as when mitigation is changed for the entire corporate family or when Commission-approved or required language in the tariff needs updating, and results in a more efficient use of seller and agency resources.

b. Proposal

143. We clarify on the Commission's Web site how a corporate family that chooses to submit a joint master corporate tariff should identify its designated filer and what each of the other filers should submit into their respective eTariff databases. That information can be found on the Commission's Web site at *http://*

[141] *Id.* P 181 n.258.

[142] 16 U.S.C. 824b.

[143] *See* 18 CFR 33.2(c)(3).

[144] When the changes to § 35.42(c) as proposed here are combined with the changes to § 35.42(c) proposed above, the revised § 35.42(c) would read as follows: When submitting a change in status notification regarding a change that impacts the pertinent assets held by a Seller or its affiliates with market-based rate authorization, a Seller must include an appendix of *all* assets, *including the new assets and/or affiliates reported in the change in status,* in the form provided in Appendix B of this subpart, *written descriptions of their affiliates and corporate structure or upstream ownership, and an organizational chart. The organizational chart must depict the Seller's prior and new corporate structures indicating all upstream owners, energy subsidiaries and energy affiliates unless the Seller demonstrates that the change in status does not affect the corporate structure and the Seller's affiliations.*

[145] *Electronic Tariff Filings,* Order No. 714, FERC Stats. & Regs. ¶ 31,276, at P 60 (2008).

[146] *See id.* P 63.

www.ferc.gov/industries/electric/gen-info/mbr/tariff/joint.asp.

G. Clarification of Commission Language in Performing SIL Studies

1. Current Policy

a. OASIS Practices

144. The Commission adopted the requirement that the SIL study be used in both the indicative screens and the DPT analysis as the basis for establishing the amount of power that can be imported into the relevant geographic market.[147] The Commission also stated that the SIL study shown in Appendix E of the April 14, 2004 Order is the only study that meets this requirement.[148]

145. The Commission's OASIS requirements are intended to ensure that potential transmission customers receive access to information that will enable them to obtain transmission service on a non-discriminatory basis from any transmission provider. The transmission provider's OASIS provides, among other things, information by electronic means about ATC for point-to-point service and provides a process for requesting transmission service.[149]

b. SIL Studies and OASIS Practices

146. In Order No. 697, the Commission found that SIL studies performed by sellers ''should not deviate from'' and ''must reasonably reflect'' the seller's OASIS operating practices and ''techniques used must have been historically available to customers.'' [150] Order No. 697 also stated that

> [b]y OASIS practices, we mean sellers shall use the same OASIS methods and studies used historically by sellers (in determining simultaneous operational limits on all transmission lines and monitored facilities) to estimate import limits from aggregated first-tier control areas into the study area.[151]

147. Furthermore, the April 14, 2004 Order requires that the seller consider ''all internal/external contingency facilities and all monitored/limiting facilities that were used historically to approximate area-area transmission availability'' and utilize scaling methods ''according to the same methods used historically in assessing available transmission for non-affiliate resources.'' [152]

148. Similarly, in *Pinnacle West,*[153] the Commission found that ''simultaneous transmission import capability used in the market screens should account for how transmission is actually provided by the applicant,'' explaining that ''simultaneous transmission import capability calculations should be based on actual historic conditions.'' [154]

149. Additionally, in *Carolina Power & Light,* the Commission clarified footnote 361 of Order No. 697, stating that ''in performing SIL studies, applicants should follow OASIS practices historically used by the study area and aggregated first-tier balancing authority areas.'' [155]

150. In *Puget,* the Commission largely reiterated and consolidated direction previously provided in Order No. 697, the April 14, 2004 Order, *Pinnacle West,* and *Carolina Power & Light.* The Commission clarified that sellers must ''[p]rovide copies of all Operating Guide descriptions that were applied in the Scaling section,'' as well as any operating guides used to ignore limiting elements in the SIL study results.[156] In addition, the Commission stated that applicants must exclude study area non-affiliated load from study area native load, and should not include first-tier generation serving study area non-affiliated load in net area interchange.[157] Finally, the Commission required that applicants document all instances where the SIL study differs from historical practices.[158]

151. The April 14, 2004 Order further requires that power flow benchmark cases should represent ''operational practices historically used'' and ''reasonably simulate the historical conditions that were present.''[159] Historical conditions include

> facility/line deratings used to maintain capacity benefit margins (CBM) and transmission reliability (TRM/CBM), actual unit dispatch used to fulfill network and firm reservation obligation, the actual peak demand, generator operating limits opposed on all resources in real time, other limits/constraints imposed by the [Transmission Provider] TP during the season peaks.[[160]]

152. In addition, Order No. 697 requires that power flow cases ''represent the transmission provider's tariff provisions and firm/network reservations held by seller/affiliate resources during the most recent seasonal peaks.'' [161]

153. In *Puget,* the Commission stated that ''[l]ong-term firm transmission reservations for applicant/affiliate generation resources that serve study area load reduce the amount of study area transmission capability available to potential competitors'' and that ''[f]ailing to properly account for such reservations is inconsistent with the Commission's methodology for calculating SIL values.'' [162]

154. In addition, the Commission stated that the transmission capability associated with study area long-term firm import transmission reservations also must be subtracted from the study area's native load to accurately represent the amount of study area native load available to be served by first-tier area generation.[163] This direction is reflected in Row 8 of Submittal 1 found in Appendix B of *Puget.*[164]

c. Simultaneous TTC

155. Order No. 697 allows the use of simultaneous TTC values in performing SIL studies. The Commission stated that this was permissible ''provided that these TTCs are the values that are used in operating the transmission system and posting availability on OASIS.'' The Commission required sellers to provide evidence that simultaneous TTC values account for simultaneity, internal and first-tier external transmission limitations, and transmission reliability margins; and are used in operating the transmission system and posting availability on OASIS.[165]

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[147] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 19.

[148] *Id.* (citing April 14, 2004 Order, 107 FERC ¶ 61,018 at Appendix E). The April 14, 2004 Order predates Order No. 697. However, Order No. 697 largely adopts the requirements of the April 14, 2004 Order. *Id.* PP 19, 354–362.

[149] 18 CFR 37.2, 37.6(b).

[150] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 354 (citing *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,602, at PP 77, 78 (2006)).

[151] *Id.* n.361.

[152] April 14 Order, 107 FERC ¶ 61,018 at Appendix E.

[153] *Pinnacle West Capital Corp.,* 109 FERC ¶ 61,295 (2004), *clarified,* 110 FERC ¶ 61,127 (2005) (*Pinnacle West*). *Pinnacle West* predates Order No. 697. However, Order No. 697 largely affirms statements made in *Pinnacle West.* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 354–362.

[154] *Pinnacle West,* 110 FERC ¶ 61,127 at P 8.

[155] *Carolina Power & Light Co.,* 128 FERC ¶ 61,039, at P 7 (*Carolina Power & Light*), *clarified,* 129 FERC ¶ 61,152 (2009).

[156] *Puget,* 135 FERC ¶ 61,254 at Appendix B, Reporting Requirements for Submittals 8, 9.

[157] *Id.* at Reporting Requirements for Submittal 10.

[158] *Id.* at Reporting Requirements for Submittal 11.

[159] April 14, 2004 Order, 107 FERC ¶ 61,018 at Appendix E.

[160] *Id.*

[161] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 354.

[162] *Puget,* 135 FERC ¶ 61,254 at P 15.

[163] *Id.* P 16.

[164] *Id.* at Appendix B.

[165] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 364.

156. In Order No. 697–A, the Commission clarified that ''the use of simultaneous TTC values in the SIL study must properly account for all firm transmission reservations, transmission reliability margin, and capacity benefit margin.'' [166]

2. Proposal

157. We propose to provide clarification regarding several issues that have arisen regarding the proper way to perform SIL studies. In particular, the we propose clarification on issues relating to what is included in ''OASIS practices,'' how to deal with conflicts between OASIS practices and the Commission directions provided in Appendix B of *Puget,* and the correct load value to use in the SIL study.

158. The purpose of the SIL study is to calculate the total simultaneous import capability available to first-tier uncommitted generation resources, while also considering system limitations and existing resource commitments (i.e., long-term firm transmission reservations). Therefore, the methodology a transmission provider uses to calculate simultaneous TTC values [167] must be consistent with the methodology used for calculating and posting ATC and for evaluation of firm transmission service requests, consistent with Commission policy and precedent. Import capability available to a transmission provider during real-time operations should not be included in the transmission provider's SIL value if such import capability is not available to non-affiliated uncommitted generation resources requesting long-term firm transmission service. The following clarifications are therefore proposed.

a. OASIS Practices

159. As discussed above, the methodology a transmission provider uses to calculate SIL values must be consistent with the methodology it uses for calculating and posting ATC [168] and for evaluating transmission service requests. We propose the following clarifications:

160. We propose to clarify that the term ''OASIS practices'' refers specifically to the seasonal benchmark power flow case modeling assumptions, study solution criteria,[169] and operating practices historically used by the first-tier and study area transmission providers [170] to calculate and post ATC and to evaluate requests for firm transmission service.[171]

161. Second, we propose to clarify that in performing a SIL study the transmission provider must utilize its OASIS practices consistent with the administration of its tariff. The seasonal benchmark power flow cases submitted with a SIL study should represent historical operating practices only to the extent that such practices are available to customers requesting firm transmission service. For example, if the transmission provider does not allow the use of an operating guide when evaluating firm transmission service requests, the transmission provider should not be allowed to use the operating guide when calculating SIL values.[172]

b. SIL Studies and OASIS Practices

162. Where there is a conflict between the transmission provider's tariff or OASIS practices and the directions specified in the *Puget* order for performing SIL studies, we propose to clarify that sellers should follow OASIS practices except as noted below. Sellers are reminded that, in instances where actual OASIS practices differ from the SIL direction provided in *Puget,* sellers should both use actual OASIS practices and provide documentation specifically identifying such practices.[173] We propose to clarify that to the extent that a seller's SIL study departs from actual OASIS practices,[174] such departures are only permitted where use of actual OASIS practices is incompatible with an analysis of import capability from an aggregated first-tier area. We invite comments identifying potential areas where actual OASIS practices may be incompatible with the performance of SIL studies.

163. Further, we remind sellers that the calculated SIL value should account for any limits defined in the tariff, such as stability or voltage.[175] If a seller utilizes a direct current analysis when performing a SIL study, but an alternating current analysis when evaluating transmission service requests, the seller must validate the total aggregate transfer level value, consistent with the transmission provider's OASIS practices, if modeled using an alternating current load flow model.[176]

164. We also reiterate that sellers may use load scaling to perform a SIL study if they use load scaling in their OASIS practices, ''provided they submit adequate support and justification for the scaling factor used in their load shift methodology and how the resulting SIL number compares had the company used a generation shift methodology.'' [177]

165. Further, we propose to clarify that when properly accounting for long-term firm transmission reservations for generation resources that serve study area load, sellers must reduce the simultaneous TTC value [178] by

[166] Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 142.

[167] *See* Row 4 of proposed Submittal 1 (Total Simultaneous Transfer Capability).

[168] Section 15.2 (Determination of Available Transfer Capability) of the *pro forma* OATT states ''[i]n the event sufficient transfer capability may not exist to accommodate a service request, the Transmission Provider will respond by performing a System Impact Study.'' *See Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g,* Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299 (2008), *order on reh'g,* Order No. 890–C, 126 FERC ¶ 61,228 (2009), *order on clarification,* Order No. 890–D, 129 FERC ¶ 61,126 (2009).

[169] Study solution criteria may include but are not limited to distribution factor thresholds, transformer tap adjustments, reactive power limits, transmission equipment ratings, and model solution settings.

[170] We reiterate that, while entities may not be familiar with all of the OASIS practices of transmission providers in first-tier balancing authority areas, they should at least be familiar with major constraints, path limits, and delivery problems in neighboring transmission systems. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 354 n.361.

[171] While the OASIS practices associated with non-firm transmission service may result in a higher SIL value, the interruptible nature of such service makes it inappropriate as a measure of uncommitted generation capacity in the first-tier available to compete in the study area.

[172] By ''operating guide'' we are generally referring to the NERC defined term ''Operating Procedure,'' which is defined as ''a document that identifies specific steps or tasks that should be taken by one or more specific operating positions to achieve specific operating goal(s).'' *See* NERC, Glossary of Terms Used in NERC Reliability Standards 53 (2014), *http://www.nerc.com/pa/Stand/Glossary%20of%20Terms/Glossary_of_Terms.pdf.* In the SIL study context, this may include switching procedures, special protection systems, load throw-over schemes, temporary transmission line rating changes, and other actions that are not typically represented in the seasonal benchmark power flow models.

[173] *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 356.

[174] *See Puget,* 135 FERC ¶ 61,254 at Appendix B.

[175] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 346.

[176] *See Pinnacle West Capital Corporation,* 117 FERC ¶ 61,316, at P 11 n.19 (2006) (''The resulting loading and voltages for the limiting cases, if derived from DC (direct current) load flow analysis would have been verified by AC (alternating current) load flow analysis and demonstrated to be within the applicable system operating limits as dictated by thermal, voltage or stability considerations to ensure system reliability. The Commission requires that such comparisons be included in the applicant's working papers that are submitted to the Commission.'').

[177] Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 at P 145.

[178] The revised Standard Screen Format (*e.g.,* Rows B1 and M1 in the market share screen (Long-Term Firm Purchases (from outside the study area))) must reflect the long-term firm reservations from Submittal 1, Table 1, Row 5 of *Puget. Puget,* 135 FERC ¶ 61,254 at Appendix B.

subtracting all long-term firm import transmission reservations.[179] The Commission has already provided guidance with respect to accounting for long-term firm transmission reservations into the study area from affiliated generation resources located outside the study area.[180] The proposed revised Appendix A Standard Screen Format accounts for all long-term firm import transmission reservations into the study area.[181] Therefore, we propose to direct applicants to subtract all long-term firm import transmission reservations, including reservations held by non-affiliated sellers, from the simultaneous TTC value. We propose revisions to Submittal 2 to account for these non-affiliate long-term firm reservations. Accounting for all long-term firm reservations ensures that the determination of the SIL study value is consistent with the method used to allocate this value to uncommitted generation capacity in the aggregated first-tier area for the indicative screens. Sellers should refer to Submittal 1 for further information.

166. Finally, we propose to clarify that sellers must account for wheel through transactions where such transactions are used to serve a non-affiliated load that is embedded within a study area. Specifically, the seller should reduce the simultaneous TTC value by subtracting the value of all wheel-through transactions. These transactions should be accounted for as long-term firm import transmission reservations, and reported in Submittal 2. We propose revisions to Submittal 2 to account for wheel-through transactions. While such generation is not used to serve study area load, it still reduces the amount of transmission capability available to first-tier generators competing to serve study area load.

167. We propose to clarify that, where a first-tier market or balancing authority area is directly interconnected to the study area only by controllable tie lines [182] and is not interconnected to any other first-tier market or balancing authority area, sellers should follow their OASIS practices regarding calculation and posting of ATC for such areas. If sellers' OASIS practices are incompatible with the SIL study (e.g., ATC is based on tie line rating), sellers may use an alternative process to account for import capability for such tie lines. We propose to further clarify that, in such circumstances, it will be presumed reasonable to model a controllable tie line as a single equivalent first-tier generator connected to the study area by a radial line with a rating equal to the rating of the controllable tie line. Sellers should document any instances where modeling of controllable tie lines deviates from OASIS practices, and explain such deviations, including: How tie line flow is accounted for in net area interchange; how tie line flow is scaled or otherwise controlled when calculating simultaneous incremental transfer capability; and how to account for long-term firm transmission reservations over controllable tie lines.

168. To the extent that the study area is directly interconnected to first-tier areas by controllable merchant transmission lines (e.g., Linden VFT), sellers should properly account for capacity rights on such lines. If sellers hold long-term capacity rights on such lines, these rights should be accounted for as long-term firm transmission reservations. If sellers lack sufficient knowledge regarding the existence and attributes of capacity rights on controllable merchant lines, they shall assume the full capacity of such lines is held by sellers with long-term firm transmission reservations.

169. As an initial matter, we reiterate that the SIL study is ''intended to provide a reasonable simulation of historical conditions'' and is not ''a theoretical maximum import capability or best import case scenario.'' [183] Order No. 697 stated that the SIL study ''is a study to determine how much competitive supply from remote resources can serve load in the study area.'' [184] The Commission clarified in *Puget* that sellers should not report study area non-affiliated load as study area native load, and should adjust modeled net area interchange by the same amount.[185] However, the exclusion of all study area non-affiliated load may result in SIL values that are inconsistent with the intent of the indicative screens. Furthermore, in the event the SIL value is limited by study area load, restricting study area load to affiliated load fails to account for import capability that may be used to serve wholesale load customers. Therefore, we propose to require sellers to include all load associated with balancing authority area(s) within the study area. Sellers should only adjust the reported value for modeled net area interchange to account for first-tier generation serving load associated with a first-tier balancing authority area that is modeled as part of the study area.[186] To ensure Submittal 1 is consistent with these requirements, we propose to revise Row 8 to read ''Adjusted Historical Peak Load'' (instead of ''Study area adjusted native load'').

170. We are also looking for consistent, reported load values for all sellers to use in preparing SIL studies. *Puget,* Appendix B, Submittal 1 requires sellers to use FERC Form No. 714 load values or explain the source of the data used. Some sellers have commented that the load values in their models differ from Form No. 714 data and have sought to rely on data from sources other than FERC Form No. 714. We seek industry comment on what sources other than FERC Form No. 714 may be appropriate sources to rely on in determining historical peak load.

171. We clarify that the values provided in Submittal 1 should generally be supported by the submitted seasonal benchmark power flow models. In particular, we expect that Row 1 (Simultaneous Incremental Transfer Capability), Row 2 (Modeled Net Area Interchange), and Row 4 (Total Simultaneous Transfer Capability) should agree with the corresponding values from the seasonal benchmark power flow models. Any differences should be explained by the seller. We propose to update Submittal 1, as reflected in Appendix E to this NOPR, to provide additional clarity on the expected values for certain rows.[187] We propose to post a new version of Submittal 1 on the Commission's Web site.

c. Simultaneous TTC

172. We propose to define standard guidance for data submittals and representations that sellers using the simultaneous TTC method must provide to the Commission. First, sellers must provide historical data of actual, hourly, real-time TTC values used for operating

[179] *See* Revised Appendix E, Submittal 1, Row 5.

[180] *Puget,* 135 FERC ¶ 61,254 at P 15.

[181] *See* Revised Appendix A, Standard Screen Format, specifically Rows A1, B1, E1 and F1 in the market share screen and Rows A1, B1, L1 and M1 in the pivotal supplier screen.

[182] Controllable tie lines include DC transmission facilities and AC transmission facilities with the ability to control the magnitude and direction of power flows through equipment such as converters, phase shifting transformers, variable frequency transformers, etc.

[183] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 354 (citing *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,602, at P 77 (2006)).

[184] *Id.* P 361.

[185] *Puget,* 135 FERC ¶ 61,254 at Appendix B.

[186] If the load is modeled as part of another area, i.e., as a non-area load attached to an area bus, and the net area interchange calculation includes both tie lines and non-area loads attached to area buses, net area interchange associated with service to such load should be approximately zero, and no adjustment will be necessary.

[187] *See* Revised Appendix E, Submittal 1.

the transmission system and posting availability on OASIS for each interface during each seasonal study period. Sellers should identify the date and hour from which simultaneous TTC values were calculated. Sellers may use the maximum sum of TTC values for any day and time during each season, so long as they also demonstrate that these TTC values are simultaneously feasible. Sellers may demonstrate that simultaneous TTC values are simultaneously feasible by performing a power flow study that verifies that the declared simultaneous TTC value is simultaneously feasible while accounting for all internal and external transmission limitations supplied in Appendix E and *Puget.* Sellers may also provide expert testimony explaining how the specific criteria and procedures used to calculate posted TTC values result in TTC values that are simultaneously feasible.

173. We reiterate that, in the event there are limited interconnections between first-tier markets, the Commission will review evidence that potential loop flow between first-tier areas is properly accounted for in the underlying SIL values on a case-by-case basis.[188] However, we clarify that simply attesting that first-tier markets or balancing authority areas are not directly interconnected is not sufficient evidence that TTC values posted on OASIS are simultaneous, as this does not preclude internal transmission limitations from limiting the simultaneous TTC below the sum of individual path TTC values.

174. We seek comment on these proposals.

H. Parts 101 and Part 141 Waivers

1. Current Policy

175. As noted in Order No. 697, the Commission has granted certain entities with market-based rate authority, such as power marketers and independent or affiliated power producers, waiver of the Commission's Uniform System of Accounts requirements, specifically waiver of Parts 41, 101, and 141 of the Commission's regulations, except §§ 141.14 and 141.15.[189] The Commission found that the costs of complying with the Uniform System of Accounts requirements, and specifically Parts 41, 101, and 141 of the Commission's regulations, outweigh any incremental benefits of such compliance where the seller only transacts at market-based rates.[190] However, the Commission typically does not grant market-based rate sellers waiver of §§ 141.14 and 141.15 of the Commission's regulations, which address certain reporting requirements applicable to hydropower licensees.[191]

2. Proposal

176. We clarify here that any waiver of Part 101 granted to a market-based rate seller is limited such that the waiver of the provisions of Part 101 that apply to hydropower licensees is not granted with respect to licensed hydropower projects. Hydropower licensees are required to comply with the requirements of the Uniform System of Accounts pursuant to 18 CFR Part 101 to the extent necessary to carry out their responsibilities under Part I of the FPA, particularly sections 4(b), 10(d) and 14 of the FPA.[192] We further note that a licensee's status as a market-based rate seller under Part II of the FPA does not exempt it from accounting responsibilities as a licensee under Part I of the FPA.[193] Thus, hydropower licensees that received waiver of Part 101 of the Commission's regulations as part of their market-based rate applications under Part II of the FPA are cautioned that such waivers do not relieve them of their obligations to comply with the Uniform System of Accounts to the extent necessary to carry out their responsibilities under Part I of the FPA with respect to their licensed projects.

177. We further direct market-based rate sellers that own licensed hydropower projects to ensure that their market-based rate tariffs reflect appropriate limitations on any waivers that previously have been granted. Specifically, to the extent that the hydropower licensee has been granted waiver of Part 101 as part of its market-based rate authority, the licensee's market-based rate tariff limitations and exemptions section should be revised to provide that the seller has been granted waiver of Part 101 of the Commission's regulations with the exception that waiver of the provisions that apply to hydropower licensees has not been granted with respect to licensed hydropower projects. Similarly, to the extent that a hydropower licensee has been granted waiver of Part 141 as part of its market-based rate authority, it should ensure that the limitation and exemptions section of its market-based rate tariff specifies that waiver of Part 141 has been granted, with the exception of §§ 141.14 and 141.15 (which pertain to the filing by hydropower licensees of Form No. 80, Licensed Hydropower Development Recreation Report, and the Annual Conveyance Report).[194]

178. These market-based rate tariff compliance filings are to be made the next time the hydropower licensee proposes a change to its market-based rate tariff, files a notice of change in status pursuant to 18 CFR 35.42, or submits an updated market power analysis in accordance with 18 CFR 35.37. In addition, going forward, any market-based rate seller requesting waivers of Parts 101 and/or 141 should include these limitations in their market-based rate tariffs, regardless of whether they own any licensed hydropower projects. This will ensure that hydropower licensees understand the limitations on Parts 101 and 141 waivers. To the extent that the market-based rate seller is not a licensee, these limitations should not have any effect as they only deny waiver of certain provisions affecting licensees. If a market-based rate seller becomes a hydro licensee after it receives market-based rate authority, it must file revisions to its market-based rate tariff to reflect the limitations in its Parts 101

[188] *Atlantic Renewables Projects II,* 135 FERC ¶ 61,227, at P 9 (2011).

[189] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 976, 984.

[190] *Id.* P 985 (noting that the Commission has ''previously stated that Parts 41, 101 and 141 prescribe certain accounting and reporting requirements that focus on the assets that a utility owns, and waiver of these requirements is appropriate where the utility 'will not own any such assets, its jurisdictional facilities will be only corporate and documentary, its costs will be determined by utilities that sell power to it, and its earnings will not be defined and regulated in terms of an authorized return on invested capital' '').

[191] *See Electron Hydro, LLC,* 144 FERC ¶ 61,161, at P 23 (2013).

[192] In *Trafalgar Power Inc.,* 87 FERC ¶ 61,207, at 61,798 n.46 (1999) (*Trafalgar Power*), the Commission stated:

Under [s]ection 14 of the FPA, the Federal government may take over a project upon expiration of the project's licensee, conditioned upon the government's payment to the licensee of the 'net investment of the licensee in the project or projects taken.' Section 4(b) requires licensees to file a statement showing the 'actual legitimate original cost of construction of such project' to enable the Commission to determine 'the actual legitimate cost of and the net investment in' the project. Section 10(d) requires licensees to establish an amortization reserve account that will reflect excess or surplus earnings of their licensed project if such earnings have accumulated in excess of a reasonable rate of return upon the 'net investment' in the project during a period beginning after the first twenty years of operations. Pursuant to [s]ection 10 (d) of the FPA the amount transferred to the amortization reserve may be used to reduce a licensee's net investment in the project, and if, after expiration of the license, the government takes over the project under [s]ection 14, it will be required to compensate the licensee for its net investment in the project, reduced by the amortization reserve for the project.

[193] *See Seneca Gen., LLC,* 145 FERC ¶ 61,096, at P 23 n.20 (2013) (citing *Trafalgar Power,* 87 FERC ¶ 61,207, at 61,798).

[194] *See Domtar Maine, LLC,* 133 FERC ¶ 61,207, at P 23 (2010).

and 141 waivers within 30 days of the effective date of its license.

I. Miscellaneous

1. Regional Reporting Schedule

179. Section 35.37(a)(1) of the Commission's regulations requires Category 2 sellers to submit a market power analysis ''every three years, according to the schedule contained in Order No. 697.'' [195] The Commission stated in Order No. 697 that Category 2 sellers ''will be required to file an updated market power analysis based on the schedule in Appendix D.'' [196] Concurrent with the issuance of this NOPR, we will post on the Commission's Web site an updated version of the schedule. Additionally, we propose to revise § 35.37(a)(1) as follows: In addition to other requirements in subparts A and B, a Seller must submit a market power analysis in the following circumstances: When seeking market-based rate authority; for Category 2 Sellers, every three years, according to the schedule (*proposing to delete*)[contained in Order No. 697, FERC Stats. & Regs. ¶ 31,252] *posted on the Commission's Web site;* or any other time the Commission directs a Seller to submit one. Failure to timely file an updated market power analysis will constitute a violation of Seller's market-based rate tariff.

180. We also include an updated region map in Appendix D of this NOPR.

2. Affirmative Statement

181. In Order No. 697, as part of the vertical market power analysis, the Commission stated that it would require sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.[197] This requirement is codified at § 35.37(e)(4): ''In addition, a Seller is required to make an affirmative statement that it has not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.'' [198] In Order No. 697, the Commission stated that the obligation applies both to the seller and its affiliates, but is limited to the geographic market(s) in which the seller is located.[199] However, many sellers have not mentioned their affiliates when making their affirmative statements. Therefore, we propose to revise § 35.37(e)(4) (which is proposed elsewhere in this NOPR to be renumbered as § 35.37(e)(3)), as follows to make clear that the affirmative statement requirement applies to the seller and its affiliates: A Seller must ensure that this information is included in the record of each new application for market-based rates and each updated market power analysis. In addition, a Seller is required to make an affirmative statement that it *and its affiliates have (proposing to delete)*[has] not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.

IV. Information Collection Statement

182. The information collection requirements contained in this proposed rule are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA).[200] The OMB regulations require approval of certain reporting and recordkeeping requirements (collections of information) imposed by agency rules.[201] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to this collection of information unless the collection of information displays a valid OMB control number.

183. Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden,[202] including the use of automated information techniques.

Calculated Burden

184. We propose to clarify and streamline the Commission's regulations, and to reduce the burden on entities seeking to obtain or retain market-based rate authority by revising existing market-based rate requirements under Subpart H to Part 35 of Title 18 of the Code of Federal Regulations. Specifically, as discussed below, three significant filing burdens will be reduced or eliminated by the proposed rule due to (1) eliminating the requirement for sellers in an RTO to file indicative screens; (2) creating a threshold for reporting new affiliations only if they result in a 100 MW or more cumulative change in generation capacity; and (3) discontinuing land acquisition reporting requirements for market-based rate sellers. As discussed below, other amendments in the proposed rule also are expected to reduce the filing burden on market-based rate sellers, but to a lesser extent.

185. Section 35.37 of the Commission's regulations currently requires market-based rate sellers to submit a horizontal market power analysis when seeking to obtain or retain market-based rate authority.[203] We propose to implement a streamlined procedure that will eliminate the requirement to file the indicative screens as part of a horizontal market power analysis for any seller in an RTO if the seller is relying on Commission-approved monitoring and mitigation to mitigate any potential market power it may have. Eliminating the requirement for RTO sellers to file indicative screens will reduce the burden of filing a horizontal market power analysis for a large portion of market-based rate sellers when filing updated market power analyses, initial applications for market-based rate authority, and notices of change in status.

186. We propose to further reduce the filing burden on market-based rate sellers by adopting a reporting threshold of a 100 MW cumulative net change in generation capacity for reporting changes in status regarding new affiliations. This change applies the 100 MW reporting threshold for new generation in 18 CFR 35.42(a)(1) to the reporting requirement for new affiliations in 18 CFR 35.42(a)(2). Under this proposed change, we expect that market-based rate sellers will file fewer changes in status, instead of reporting multiple acquisitions of small newly-affiliated generators in one filing. Given that a change in status filing typically includes a transmittal letter and a revised asset appendix and may also include indicative screens, we expect this change to reduce burdens on market-based rate sellers.

187. Section 35.42(d) of the Commission's regulations currently requires that all market-based rate sellers report on a quarterly basis the acquisition of site(s) that have the potential to be developed for new generation capacity of 100 MWs or

[195] 18 CFR 35.37(a)(1).

[196] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

[197] *Id.* P 447.

[198] 18 CFR 35.37(e)(4).

[199] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

[200] 44 U.S.C. 3507(d) (2012).

[201] 5 CFR 1320.11.

[202] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 CFR 1320.3.

[203] 18 CFR 35.37.

more.[204] The Commission proposes to eliminate the burden on all market-based rate sellers by discontinuing the quarterly land acquisition reporting requirement in § 35.42(d). The Commission also proposes to eliminate the provision in § 35.37(e)(2) requiring reporting of sites for generation capacity development as part of the vertical market power analysis.

Other Changes in Burden

188. In addition to the elimination of significant burdens to market-based rate sellers discussed above, we propose to revise a number of current market-based rate requirements in 18 CFR Part 35 to provide greater clarity to entities seeking to acquire and retain market-based rate authority. These revisions are expected to: (1) Reduce the need for clarification phone calls from market-based rate sellers and subsequent follow-up phone calls from staff; (2) reduce amendments filed to correct errors and the related processing delays; and (3) streamline existing requirements, thereby reducing the burden in future filings. We estimate that such measures will typically reduce burdens on market-based rate sellers. Some simplifications to the existing market-based rate requirements may create an initial, minimal one-time implementation burden for market-based rate sellers when the filing is first submitted.

189. The Commission is also making a few minor additions to the current requirements. These proposed additions include: (a) Providing organization charts (for initial applications for market-based rate authority, updated market power analyses and notices of change in status reporting new affiliations); (b) splitting some entries in Appendix A to provide more detail;[205] (c) citing the Order accepting the OATT in Appendix B; and (d) amendments to Submittal 2 to account for non-affiliate long-term firm reservations and wheel-through transactions.

190. However, any increases in burden (for the initial filing, such as downloading the new proposed spreadsheets, as well as ongoing additions) are expected to be greatly outweighed by the reduction in burden.

Public Reporting Burden: The Commission recently issued notices on the burden estimate for FERC–919.[206] The estimated total annual burden of 85,444 hours includes:

- Market power analysis in new applications for market-based Rates [18 CFR 35.37(a)], 53,250 hours;
- Triennial market power analysis in Category 2 seller updates [18 CFR 35.37(a)], 20,750 hours;
- Quarterly land acquisition reports [18 CFR 35.42(d)], 3,208 hours; and
- Change in status reports [18 CFR 35.42(a)], 8,236 hours.

191. In comparison, the total burden estimate for all market-based rate sellers after the Proposed Rule goes into effect is expected to be significantly lower. The total cost for market-based rate sellers after revising the market-based rate requirements is expected to be as follows:[207]

FERC–919, Burden After Implementation of Proposals in NOPR in Docket No. RM14–14

	Number of respondents (A)	Number of responses per respondent (B)	Total number of responses (A) × (B) = (C)	Average burden hours per response (D)	Estimated total annual burden hours (C) × (D)
New applications for market-based rates [18 CFR 35.37], With Screens	107	1	107	250	26,750
New applications for market-based rates [18 CFR 35.37], No Screens	106	1	106	120	12,720
Triennial market power analysis in Category 2 seller updates [18 CFR 35.37], With Screens	42	1	42	250	10,500
Triennial market power analysis in Category 2 seller updates [18 CFR 35.37], No Screens	41	1	41	120	4,920
Quarterly land acquisition reports [18 CFR 35.42(d)]	0	0	0	0	0
Change in status reports [18 CFR 35.42(a)], With Screens	13	1	13	250	3,250
Change in status reports [18 CFR 35.42(a)], No Screens	224	1	224	20	4,480
Total					62,620

192. After implementation of the proposed changes, the total estimated annual cost burden to respondents is $5,497,409.80 [62,620 hours * $87.79[208]) = $5,497,409.80]. This represents a reduction in total annual burden for FERC–919 of 22,824 hours[209] (to 62,620 hours from 85,444 hours) or a 27 percent reduction.

[204] 18 CFR 35.42(d).

[205] For example, we propose to split Row A (Installed Capacity) in the existing pivotal supplier screen into Row A (Installed Capacity (from inside the study area)) and Row A1 (Remote Capacity (from outside the study area)), with similar changes being made to currently defined Rows B, E, and F. Similar changes are proposed for the same rows in the market share screen.

[206] The Commission issued notices requesting comment in Docket No. IC14–2–000. *See* 78 FR 62,006 (Oct. 11, 2013); 79 FR 818 (Jan. 7, 2014). The FERC–919 and related burden estimates were approved by OMB on February 27, 2014.

[207] Order No. 697 included the burden for Appendix A Parts I and II. The burden was not modified when Appendix A Part II was inadvertently omitted in Order No. 697–A; the burden related to Appendix A Part II continues to be included in the FERC–919.

[208] The Commission estimates this figure based on the Bureau of Labor Statistics data (for the Utilities sector, at *http://www.bls.gov/oes/current/naics2_22.htm,* plus benefits information at *http://www.bls.gov/news.release/ecec.nr0.htm*). The salaries (plus benefits) for the three occupational categories are:

Economist: $74.29/hour

Electrical Engineer: $60.70/hour

Lawyer: $128.39/hour

The average hourly cost of the three categories is $87.79 [($74.29+$60.70+$128.39)/3].

[209] This includes reductions for: New applications for market-based rates of 13,780 hours; triennial market power analysis of 5,330 hours; quarterly land acquisition reports of 3,208 hours; and change in status reports of 506 hours.

Title: Proposed Revisions to Market Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities (FERC–919).

Action: Revision of Currently Approved Collection of Information.

OMB Control No.: 1902–0234.

Respondents for this Rulemaking: Public utilities, wholesale electricity sellers, businesses, or other for profit and/or not for profit institutions.

Frequency of Responses:

Initial Applications: On occasion.

Updated Market Power Analyses: Updated market power analyses are filed every three years by Category 2 sellers seeking to retain market-based rate authority.

Land Acquisitions: We propose to eliminate this requirement under the proposed rule.

Change in Status Reports: On occasion.

Necessity of the Information:

Initial Applications: In order to retain market-based rate authority, the Commission must first evaluate whether a seller has the ability to exercise market power. Initial applications help inform the Commission as to whether an entity seeking market-based rate authority lacks market power, and whether sales by that entity will be just and reasonable.

Updated Market Power Analyses: Triennial updated market power analyses allow the Commission to monitor market-based rate authority to detect changes in market power or potential abuses of market power. The updated market power analysis permits the Commission to determine that continued market-based rate authority will still yield rates that are just and reasonable.

Change in Status Reports: The change in status requirement permits the Commission to ensure that rates and terms of service offered by market-based rate sellers remain just and reasonable.

Internal Review: The Commission has reviewed the reporting requirements and made a determination that revising the reporting requirements will ensure the Commission has the necessary data to carry out its statutory mandates, while eliminating unnecessary burden on industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimate associated with the information requirements.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873]. Please send comments concerning the collection of information and the associated burden estimates to the Commission, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4638, fax: (202) 395–7285]. For security reasons, comments to OMB should be submitted by email to: *oira_submission@omb.eop.gov.* Comments submitted to OMB should include Docket Number RM14–14, FERC–919, and OMB Control Number 1902–0234.

V. Environmental Analysis

193. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[210] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[211] The actions proposed here fall within the categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, or do not substantially change the effect of legislation or regulations being amended.[212] In addition, the proposed rule is categorically excluded as an electric rate filing submitted by a public utility under sections 205 and 206 of the FPA.[213] As explained above, this proposed rule, which addresses the issue of electric rate filings submitted by public utilities for market-based rate authority, is clarifying in nature. Accordingly, no environmental assessment is necessary and none has been prepared in this NOPR.

VI. Regulatory Flexibility Act

194. The Regulatory Flexibility Act of 1980 (RFA)[214] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[215] The SBA recently revised its size standard for electric utilities (effective January 22, 2014) to a standard based on the number of employees, including affiliates (from a standard based on megawatt hours).[216] Under SBA's new size standards, electric utilities, electric power distribution, and electric bulk power transmission and control, and power marketers likely come under one of the following categories and associated size thresholds:[217]

- Hydroelectric power generation, at 500 employees
- Fossil fuel electric power generation, at 750 employees
- Nuclear electric power generation, at 750 employees
- Other electric power generation (e.g., solar, wind, geothermal, biomass, and other), at 250 employees
- Electric bulk power transmission and control, at 500 employees
- Electric power distribution, at 1,000 employees.
- Wholesale Trade Agents and Brokers,[218] at 100 employees

195. Based on U.S. economic census data,[219] the approximate percentages of small firms in these categories vary from 24 percent to 99 percent. However, currently FERC does not have information on how the economic census data compares with the specific entities affected by this proposed rule using the new SBA definitions.[220] Regardless, FERC recognizes that the rule will likely impact small electric utilities, electric power distribution, electric bulk power transmission and control, and power marketers and estimates the economic impact on each entity below.

[210] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47,897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[211] 18 CFR 380.4.

[212] 18 CFR 380.4(a)(2)(ii).

[213] 18 CFR 380.4(a)(15).

[214] 5 U.S.C. 601–612 (2012).

[215] 13 CFR 121.101 (2013).

[216] SBA Final Rule on ''Small Business Size Standards: Utilities,'' 78 FR 77343 (Dec. 23, 2013).

[217] 13 CFR 121.201, Sector 22, Utilities.

[218] The NAICS category 425120 (Wholesale Electronic Markets and Agents and Brokers, within Subsector 425) covers Power Marketers.

[219] Data and further information are available from SBA at *http://www.sba.gov/advocacy/849/12162.*

[220] For utilities in the SBA's subsector 221, the previous SBA definition stated that ''[a] firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.'' Using the previous SBA definition and EQR data from Quarter 3 of 2012 through Quarter 2 of 2013, 678 of the 1,903 sellers with market-based rate authority potentially affected by the proposed rule would have qualified as small entities. For this estimate, power marketers are included with utilities.

196. The proposed rule will eliminate some requirements, streamline and clarify others, and add a few minimal requirements, while reducing burden on entities of all sizes (public utilities seeking and currently possessing market-based rate authority). Implementation of the proposed rule is expected to reduce total annual burden by 27 percent to the industry. However, the number of filings with the Commission will decrease only slightly because the only filings that are proposed to be eliminated are the Quarterly Land Acquisition Reports, which we estimate account for four percent of the total annual burden on the industry.

197. As discussed in Order No. 697,[221] current regulations regarding market-based rate sellers under Subpart H to Part 35 of Title 18 of the Code of Federal Regulations exempt many small entities (using SBA's former definition of a small entity not exceeding 4 million megawatt hours) from significant filing requirements by designating them as Category 1 sellers.[222] Category 1 sellers are exempt from triennial updates and may use simplifying assumptions, such as assuming no competing imports, that the Commission allows sellers to use in submitting their horizontal market power analysis.

198. No longer requiring RTO sellers to file indicative screens will reduce the burden on all sellers in RTOs, including small entities in RTOs. The proposed rule also serves to clarify existing requirements, such as clarifying that sellers with fully-committed generation may submit an explanation that their generation is fully committed in lieu of submitting indicative screens. Such clarification may be particularly helpful to small entities as many small entities have fully-committed generation.

199. By adopting a reporting threshold of a 100 MW cumulative change in generation capacity for reporting changes in status regarding new affiliations, the Commission expects a reduction in the frequency of notice of change in status filings, which will necessarily reduce the burden on market-based rate sellers, including small entities.

200. The Commission is proposing to discontinue the land acquisition reporting requirements, which eliminates the need to submit such filings altogether. By so doing, the reduction in burden will be across all market-based rate sellers, including small entities.

201. The additional one-time burden to market-based rate sellers is expected to cause a minimal increase in burden only during initial implementation, and will decrease future burdens by allowing a streamlined analysis in subsequent filings. The additional ongoing requirements (such as providing organization charts, providing details on the components in Appendix A within and outside the study area, and reporting non-affiliate long-term reservations and wheel-through transactions in Submittal 2) represent information that is already available to filers and should result in little additional burden.

202. The changes to the Commission's regulations for market-based rate sellers are estimated to cause a reduction of 27 percent in total annual burden to all sellers, including small entities.

203. Accordingly, the Commission certifies that the revised requirements set forth in this NOPR will not have a significant economic impact on a substantial number of small entities, and no regulatory flexibility analysis is required. The Commission finds that the regulations adopted here should not have a significant impact on small businesses.

VII. Comment Procedures

204. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due September 23, 2014. Comments must refer to Docket No. RM14–14–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

205. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

206. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

207. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VIII. Document Availability

208. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

209. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

210. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission.

Issued: June 19, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend part 35, Chapter I, Title 18, *Code of Federal Regulations,* as follows:

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for Part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Amend § 35.36 by revising paragraph (a)(2) to read as follows:

[221] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 1126–1129.

[222] Category 1 Sellers are power marketers and power producers that own or control 500 MW or less of generating capacity in aggregate and that are not affiliated with a public utility with a franchised service territory. In addition, Category 1 sellers must not own or control transmission facilities, and must present no other vertical market power issues. 18 CFR 35.36(a)(2).

§ 35.36 Generally.

(a) * * *

(2) *A Category 1 Seller* means a Seller that:

(i) Is either a wholesale power marketer that controls or is affiliated with 500 MW or less of generation in aggregate per region or a wholesale power producer that owns, controls or is affiliated with 500 MW or less of generation in aggregate in the same region as its generation assets;

(ii) Does not own, operate or control transmission facilities other than limited equipment necessary to connect individual generating facilities to the transmission grid (or has been granted waiver of the requirements of Order No. 888, FERC Stats. & Regs. ¶ 31,036);

(iii) Is not affiliated with anyone that owns, operates or controls transmission facilities in the same region as the Seller's generation assets;

(iv) Is not affiliated with a franchised public utility in the same region as the Seller's generation assets; and

(v) Does not raise other vertical market power issues.

* * * * *

■ 3. Amend § 35.37 as follows:

■ a. In paragraph (a)(1), remove the phrase ''contained in Order No. 697, FERC Stats. & Regs. ¶ 31,252'' and add in its place ''posted on the Commission's Web site.''

■ b. Revise paragraphs (a)(2) and (c)(4).

■ c. Add paragraphs (c)C(5) and (c)(6).

■ d. Remove paragraph (e)(2) and redesignate paragraphs (e)(3) and (4) as paragraphs (e)(2) and (3), respectively.

■ e. Revise newly redesignated paragraph (e)(3).

The revisions and additions read as follows:

§ 35.37 Market Power analysis required.

(a)(1) * * *

(2) When submitting a market power analysis, whether as part of an initial application or an update, a Seller must include an appendix of assets, in the form provided in Appendix B of this subpart, and an organizational chart. The organizational chart must depict the Seller's current corporate structure indicating all upstream owners, energy subsidiaries and energy affiliates.

* * * * *

(c) * * *

(4) When submitting the indicative screens, a Seller must use the format provided in Appendix A of this subpart and file the indicative screens in an electronic spreadsheet format. A Seller must include all supporting materials referenced in the indicative screens.

(5) Sellers submitting simultaneous transmission import limit studies must file Submittal 1, and, if applicable, Submittal 2, in the electronic spreadsheet format provided on the Commission's Web site.

(6) In lieu of submitting the indicative screens, Sellers in regional transmission organization and independent system operator markets with Commission-approved market monitoring and mitigation must include a statement that they are relying on such mitigation to address any potential horizontal market power concerns.

* * * * *

(e) * * *

(3) A Seller must ensure that this information is included in the record of each new application for market-based rates and each updated market power analysis. In addition, a Seller is required to make an affirmative statement that it and its affiliates have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.

* * * * *

■ 4. Amend § 35.42 as follows:

■ a. Revise paragraphs (a)(1), (a)(2), and (c).

■ b. In paragraph (b), remove the phrase '', other than a change in status submitted to report the acquisition of control of a site or sites for new generation capacity development,''.

■ c. Remove paragraphs (d) and (e).

The revisions read as follows:

§ 35.42 Change in status reporting requirement.

(a) * * *

(1) Ownership or control of generation capacity or long-term firm purchases of capacity and/or energy that results in cumulative net increases (i.e., the difference between increases and decreases in affiliated generation capacity) of 100 MW or more of nameplate capacity in any relevant geographic market (including generation in the relevant geographic market and generation in any markets that are first tier to the relevant geographic market), or of inputs to electric power production, or ownership, operation or control of transmission facilities, or

(2) Affiliation with any entity not disclosed in the application for market-based rate authority that:

(i) Owns or controls generation facilities or has long-term firm purchases of capacity and/or energy that results in cumulative net increases (i.e., the difference between increases and decreases in affiliated generation capacity) of 100 MW or more of nameplate capacity in any relevant geographic market (including generation in the relevant geographic market(s) and generation in any markets that are first tier to the relevant geographic market(s));

(ii) Owns or controls inputs to electric power production;

(iii) Owns, operates or controls transmission facilities; or

(iv) Has a franchised service area.

* * * * *

(c) When submitting a change in status notification regarding a change that impacts the pertinent assets held by a Seller or its affiliates with market-based rate authorization, a Seller must include an appendix of all assets, including the new assets and/or affiliates reported in the change in status, in the form provided in Appendix B of this subpart, and an organizational chart. The organizational chart must depict the Seller's prior and new corporate structures indicating all upstream owners, energy subsidiaries and energy affiliates unless the Seller demonstrates that the change in status does not affect the corporate structure of the Seller's affiliations.

BILLING CODE: 6717–01–P

■ 5. Appendix A of subpart H is revised to read as follows:

Appendix A: Standard Screen Format (Data provided for illustrative purposes only)
Part I – Pivotal Supplier Analysis

Applicant-> Company X, LLC (TO)
Market -> Company X BAA
Date of Filing -> 0-Jan-00

Don't Enter Values (Outlined cell)

Row			Reference
	Generation		
	Seller and Affiliate Capacity (owned or controlled)		
A	Installed Capacity (from inside the study area)	1,500	worksheet X
A1	Remote Capacity (from outside the study area)	200	worksheet X
B	Long-Term Firm Purchases (from inside the study area)	70	worksheet X
B1	Long-Term Firm Purchases (from outside the study area)	200	worksheet X
C	Long-Term Firm Sales (in and outside the study area)	(500)	worksheet X
D	Uncommitted Capacity Imports	0	worksheet X
	Non-Affiliate Capacity (owned or controlled)		
E	Installed Capacity (from inside the study area)	300	worksheet X
E1	Remote Capacity (from outside the study area)	50	worksheet X
F	Long-Term Firm Purchases (from inside the study area)	40	worksheet X
F1	Long-Term Firm Purchases (from outside the study area)	40	worksheet X
G	Long-Term Firm Sales (in and outside the study area)	(60)	worksheet X
H	Uncommitted Capacity Imports	2,500	worksheet X
I	Study Area Reserve Requirement	(300)	worksheet X
J	Amount of Line I Attributable to Seller, if any	(200)	
K	Total Uncommitted Supply (Sum A,A1,B,B1,C,D,E,E1,F,F1,G,H,I,M)	2,840	
	Load		
L	Balancing Authority Area Annual Peak Load	1,500	worksheet X
M	Average Daily Peak Native Load in Peak Month	(1,200)	worksheet X
N	Amount of Line M Attributable to Seller, if any	(900)	worksheet X
O	Wholesale Load (SUM L,M)	300	
P	Net Uncommitted Supply (K-O)	2,540	
Q	Seller's Uncommitted Capacity (Sum A,A1,B,B1,C,D,J,N)	370	

Result of Pivotal Supplier Screen (Pass if Line Q < Line P) **Pass**
(Fail if Line Q > Line P)

Total Imports (Sum D,H), as filed by Seller ->	2,500
% of SIL for Seller's imported capacity ->	0.00
% of SIL for Other's imported capacity ->	1.00
SIL value* ->	2,500
Do Total Imports exceed the SIL value? ->	No

* Transmission owners filing triennials should use the SIL values from their Submittal 1, Row 10 (*see Puget Sound Energy, Inc.*, 135 FERC ¶ 61,254 (2011)). Other sellers should use Commission-accepted SIL values, if they exist for the study area and study period. If these values do not exist, sellers should use SIL values that have been filed but not accepted.

Appendix A: Standard Screen Format (Data provided for illustrative purposes only)
Part II – Market Share Analysis

Applicant-> Company X, LLC (TO)
Study Area -> Company X BAA
Data Year -> Don't Enter Values (Outlined cell)

Row		As filed by the Applicant/Seller Winter (MW)	Spring (MW)	Summer (MW)	Fall (MW)	Reference
	Seller and Affiliate Capacity (owned, controlled or under LT contract)					
A	Installed Capacity (inside the study area)	1,000	900	1,500	1,000	worksheet X
A1	Remote Capacity (from outside the study area)	400	300	200	200	worksheet X
B	Long-Term Firm Purchases (inside the study area)	60	40	70	30	worksheet X
B1	Long-Term Firm Purchases (from outside the study area)	200	200	200	200	worksheet X
C	Long-Term Firm Sales (in and outside the study area)	(500)	(500)	(500)	(500)	worksheet X
D	Seasonal Average Planned Outages	(150)	(50)	(80)	(100)	worksheet X
E	Uncommitted Capacity Imports	0	0	0	0	worksheet X
	Capacity Deductions					
F	Average Peak Native Load in the Season	(1,000)	(900)	(1,200)	(800)	worksheet X
G	Amount of Line F Attributable to Seller, if any	(700)	(700)	(900)	(600)	worksheet X
H	Amount of Line F Attributable to Non-Affiliates, if any	(300)	(200)	(300)	(200)	
I	Study Area Reserve Requirement	(200)	(200)	(300)	(100)	worksheet X
J	Amount of Line I Attributable to Seller, if any	(100)	(100)	(200)	(80)	worksheet X
K	Amount of Line I Attributable to Non-Affiliates, if any	(100)	(100)	(100)	(20)	
	Non-Affiliate Capacity (owned, controlled or under LT contract)					
L	Installed Capacity (inside the study area)	250	200	300	150	worksheet X
L1	Remote Capacity (from outside the study area)	50	50	50	50	worksheet X
M	Long-Term Firm Purchases (inside the study area)	30	30	30	30	worksheet X
M1	Long-Term Firm Purchases (from outside the study area)	40	30	40	20	worksheet X
N	Long-Term Firm Sales (in and outside the study area)	(50)	(30)	(60)	(50)	worksheet X
O	Seasonal Average Planned Outages	(10)	(20)	(10)	(20)	worksheet X
P	Uncommitted Capacity Imports	2,000	1,500	2,500	1,300	worksheet X
	Supply Calculation					
Q	Total Competing Supply (Sum H, K, L,L1,M,M1,N,O,P)	1,910	1,460	2,450	1,260	
R	Seller's Uncommitted Capacity (Sum A,A1,B,B1,C,D,E,G,J)	210	90	290	150	
S	Total Seasonal Uncommitted Capacity (Sum Q,R)	2,120	1,550	2,740	1,410	
T	**Seller's Market Share** (R/S)	9.9%	5.8%	10.6%	10.6%	
	Results (Pass if < 20% and Fail if ≥ 20%)	Pass	Pass	Pass	Pass	
U	Total Imports, as filed by Seller (Sum E,P)	2,000	1,500	2,500	1,300	
V	SIL value*	2,000	1,500	2,500	1,300	
	Do Total Imports exceed SIL value? (is U<=V)	No	No	No	No	

* Transmission owners filing triennials should use the SIL values from their Submittal 1, Row 10 (*see Puget Sound Energy, Inc.*, 135 FERC ¶ 61,254 (2011)). Other sellers should use Commission-accepted SIL values, if they exist for the study area and study period. If these values do not exist, sellers should use SIL values that have been filed but not accepted.

■ 6. Appendix B of subpart H is revised to read as follows:

Appendix B:

Market-Based Rate Authority and Generation Assets

This is an example of the required appendix listing the filing entity and all its energy affiliates and their associated assets which should be submitted with all market-based rate filings.

Market-Based Rate Authority and Generation Assets

Filing Entity and its Energy Affiliates	Docket # where MBR authority was granted	Generation Name	Owned By	Controlled By	Date Control Transferred	Location		In-Service Date	Capacity Rating (MW): Nameplate, Seasonal, or Five-Year Average
						Market / Balancing Authority Area	Geographic Region		

Electric Transmission Assets and/or Natural Gas Intrastate Pipelines and/or Gas Storage Facilities

Filing Entity and its Energy Affiliates	Cite to order accepting OATT or granting OATT waiver	Asset Name and Use	Owned By	Controlled By	Date Control Transferred	Location		Size (length and kV)
						Market / Balancing Authority Area	Geographic Region	

Note: The following appendices will not be published in the Code of Federal Regulations.

Appendix C

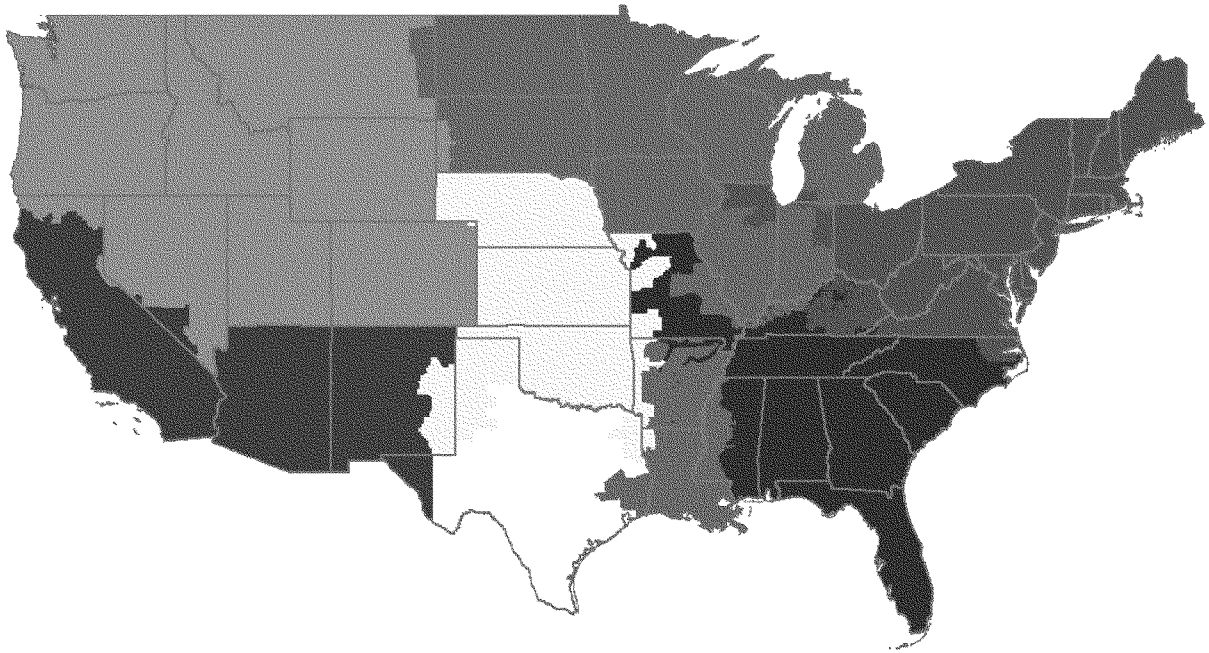
Schedule for Transmission Owning Utilities with Market-based Rate Authority that are Designated as Category 2 Sellers in the Region				
Entities Required to File	**Study Period**			**Filing Period (anytime during this month)**
Northeast Transmission Owning Utilities	December 2011	to	November 2012	December: 2013
Southeast Transmission Owning Utilities	December 2011	to	November 2012	June: 2014
Central Transmission Owning Utilities	December 2012	to	November 2013	December: 2014
SPP Transmission Owning Utilities	December 2012	to	November 2013	June: 2015
Southwest Transmission Owning Utilities	December 2013	to	November 2014	December: 2015
Northwest Transmission Owning Utilities	December 2013	to	November 2014	June: 2016
Northeast Transmission Owning Utilities	December 2014	to	November 2015	December: 2016
Southeast Transmission Owning Utilities	December 2014	to	November 2015	June: 2017
Central Transmission Owning Utilities	December 2015	to	November 2016	December: 2017
SPP Transmission Owning Utilities	December 2015	to	November 2016	June: 2018
Southwest Transmission Owning Utilities	December 2016	to	November 2017	December: 2018
Northwest Transmission Owning Utilities	December 2016	to	November 2017	June: 2019
Northeast Transmission Owning Utilities	December 2017	to	November 2018	December: 2019
Southeast Transmission Owning Utilities	December 2017	to	November 2018	June: 2020
Central Transmission Owning Utilities	December 2018	to	November 2019	December: 2020
SPP Transmission Owning Utilities	December 2018	to	November 2019	June: 2021
Southwest Transmission Owning Utilities	December 2019	to	November 2020	December: 2021
Northwest Transmission Owning Utilities	December 2019	to	November 2020	June: 2022
Northeast Transmission Owning Utilities	December 2020	to	November 2021	December: 2022
Southeast Transmission Owning Utilities	December 2020	to	November 2021	June: 2023
Central Transmission Owning Utilities	December 2021	to	November 2022	December: 2023
SPP Transmission Owning Utilities	December 2021	to	November 2022	June: 2024
Southwest Transmission Owning Utilities	December 2022	to	November 2023	December: 2024
Northwest Transmission Owning Utilities	December 2022	to	November 2023	June: 2025

Appendix C1

Schedule for Non-Transmission Owning Utilities with Market-based Rate Authority that are Designated as Category 2 Sellers in the Region					
Entities Required to File	**Study Period**				**Filing Period (anytime during this month)**
Northwest	Non-Transmission Owning Utilities	December 2010	to	November 2011	December: 2013
Northeast	Non-Transmission Owning Utilities	December 2011	to	November 2012	June: 2014
Southeast	Non-Transmission Owning Utilities	December 2011	to	November 2012	December: 2014
Central	Non-Transmission Owning Utilities	December 2012	to	November 2013	June: 2015
SPP	Non-Transmission Owning Utilities	December 2012	to	November 2013	December: 2015
Southwest	Non-Transmission Owning Utilities	December 2013	to	November 2014	June: 2016
Northwest	Non-Transmission Owning Utilities	December 2013	to	November 2014	December: 2016
Northeast	Non-Transmission Owning Utilities	December 2014	to	November 2015	June: 2017
Southeast	Non-Transmission Owning Utilities	December 2014	to	November 2015	December: 2017
Central	Non-Transmission Owning Utilities	December 2015	to	November 2016	June: 2018
SPP	Non-Transmission Owning Utilities	December 2015	to	November 2016	December: 2018
Southwest	Non-Transmission Owning Utilities	December 2016	to	November 2017	June: 2019
Northwest	Non-Transmission Owning Utilities	December 2016	to	November 2017	December: 2019
Northeast	Non-Transmission Owning Utilities	December 2017	to	November 2018	June: 2020
Southeast	Non-Transmission Owning Utilities	December 2017	to	November 2018	December: 2020
Central	Non-Transmission Owning Utilities	December 2018	to	November 2019	June: 2021
SPP	Non-Transmission Owning Utilities	December 2018	to	November 2019	December: 2021
Southwest	Non-Transmission Owning Utilities	December 2019	to	November 2020	June: 2022
Northwest	Non-Transmission Owning Utilities	December 2019	to	November 2020	December: 2022
Northeast	Non-Transmission Owning Utilities	December 2020	to	November 2021	June: 2023
Southeast	Non-Transmission Owning Utilities	December 2020	to	November 2021	December: 2023
Central	Non-Transmission Owning Utilities	December 2021	to	November 2022	June: 2024
SPP	Non-Transmission Owning Utilities	December 2021	to	November 2022	December: 2024
Southwest	Non-Transmission Owning Utilities	December 2022	to	November 2023	June: 2025

Appendix D

Generalized Map of Geographic Regions



Northeast (ISO-NE, NYISO, PJM)

Southeast (SERC and FRCC NERC Regions, excluding for PJM and MISO members)

Central (Midcontinent Independent System Operator (MISO) and members of the Midwest Reliability Organization (MRO) that are not part of another RTO)

Southwest Power Pool (SPP NERC Region, excluding MISO members)

Southwest (Arizona, most of California, part of Nevada and the portions of New Mexico and Texas within the Western Interconnection)

Northwest (The remainder of the Western Interconnection)

Appendix E

Submittal 1: Summary Table of the Components Used to Calculate SIL Values

Table 1: SIL Computation

Study Period: December 1, 20XX to November 30, 20XX

Row	Description of Component	Name of Home BAA/Market Winter (MW)	Spring (MW)	Summer (MW)	Fall (MW)	Name of First-Tier BAA Winter (MW)	Spring (MW)	Summer (MW)	Fall (MW)
1	**Simultaneous Incremental Transfer Capability** The most limiting First Contingency Incremental Transfer Capability (FCITC), Normal Incremental Transfer Capability (NITC) or equivalent values. *Note i*	1,700	1,800	1,900	2,000	3,000	3,200	3,400	3,600
2	**Modeled Net Area Interchange** (NAI) Enter a positive value and indicate the direction of flow in row 3 below. *Note ii*	500	600	700	800	200	300	400	500
3	**Interchange Direction** Indicate whether the Study Area NAI is export or import.	Import	Import	Import	Import	Export	Export	Export	Export
4	**Total Simultaneous Transfer Capability** (row 4 = row 1 +/- row 2). *Note iii*	2,200	2,400	2,600	2,800	2,800	2,900	3,000	3,100
5	**Long-Term Firm Transmission Reservations** Sum of the long-term firm transmission reservations from Table 2. *Note iv*	620	300	620	300	460	360	460	360
6	**Calculated SIL Value** (row 6 = row 4 - row 5). *Note v*	1,580	2,100	1,980	2,500	2,340	2,540	2,540	2,740
7	**Historical Peak Load** (Identify source if not from FERC Form No. 714). *Note vi*	1,400	1,900	2,500	2,000	1,400	1,900	2,500	2,000
8	**Adjusted Historical Peak Load** (row 8 = row 7 - row 5). *Note vii*	780	1,600	1,880	1,700	940	1,540	2,040	1,640
9	**Uncommitted First-Tier Generation** Amount of uncommitted generation modeled in the first-tier area. *Note viii*	13,580	12,800	14,500	12,800	13,580	12,800	14,500	12,800
10	**SIL Study Value** (row 10 = the minimum of the values entered in rows 6, 8 and 9 for each season). Use these SIL Study Values in the Market Share Screens. *Note ix*	780	1,600	1,880	1,700	940	1,540	2,040	1,640

Submittal 2: Identify Long-Term Firm Transmission Reservations Used to Import Power from Generating Resources in the First-Tier Area to Serve Native Load in the Study Area

Table 2: Long-Term Firm Transmission Reservations

		Name of Home BAA/Market				Name of First-Tier BAA			
		Winter	Spring	Summer	Fall	Winter	Spring	Summer	Fall
	Description of Remote Resource	(MW)	(MW)	(MW)	(MW)	(MW)	(MW)	(MW)	(MW)
	Affiliates								
1	MW Share of Remote Plant #1	100	-	100	-	50	50	50	50
2	MW Share of Remote Plant #2	50	50	50	50	100	-	100	-
3	MW Share of Remote Plant #3	60	-	60	-	-	50	-	50
4	Purchased Power Agreement where the energy is imported into the study area with long-term firm reservations	100	100	100	100	80	80	80	80
5	Wheel through transactions to serve first-tier area load embedded in the study area using first-tier generation								
6	Sum of affiliated long-term firm reservations	310	150	310	150	230	180	230	180
	Non-Affiliates								
7	MW Share of Remote Plant #1	100	-	100	-	50	50	50	50
8	MW Share of Remote Plant #2	50	50	50	50	100	-	100	-
9	MW Share of Remote Plant #3	60	-	60	-	-	50	-	50
10	Purchased Power Agreement where the energy is imported into the study area with long-term firm reservations	100	100	100	100	80	80	80	80
11	Wheel through transactions to serve first-tier area load embedded in the study area using first-tier generation								
12	Sum of non-affiliated long-term firm reservations	310	150	310	150	230	180	230	180
13	Sum of affiliated and non-affiliated long-term firm reservations (enter value in row 5 of Table 1 above)	620	300	620	300	460	360	460	360

[FR Doc. 2014–16002 Filed 7–24–14; 8:45 am]

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Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1

Federal Acquisition Regulation; Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2014–0051, Sequence No. 4]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–76; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of interim and final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–76. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov.*

DATES: For effective dates and comment dates see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. Please cite FAC 2005–76 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

Rules Listed in FAC 2005–76

Item	Subject	FAR case	Analyst
I	Equal Employment and Affirmative Action for Veterans and Individuals with Disabilities (Interim).	2014–013	Loeb.
II	Small Business Protests and Appeals	2012–014	Morgan.
III	Allowability of Legal Costs for Whistleblower Proceedings	2013–017	Chambers.
IV	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–76 amends the FAR as specified below:

Item I—Equal Employment and Affirmative Action for Veterans and Individuals With Disabilities (FAR Case 2014–013)

DoD, GSA, and NASA are issuing an interim rule amending the FAR to implement final rules issued on September 24, 2013, by the Office of Federal Contract Compliance Programs at the Department of Labor (DOL) relating to equal opportunity and affirmative action for veterans and individuals with disabilities. The DOL rules provide clarification of mandatory listing of employment openings, the posting of notices, making notices accessible to persons with disabilities, and requiring nondiscrimination statements in contractor solicitations or advertisements for employees. The FAR clauses have been restructured to provide a citation to the applicable clause in the DOL regulations and include a statement that summarizes the contractors' top level obligations under each clause. There is no significant impact on small entities imposed by the FAR rules.

Item II—Small Business Protests and Appeals (FAR Case 2012–014)

This final rule amends the FAR to provide revised regulatory coverage for small business size and small business status protest and appeal procedures and to ensure that the FAR contains consistent and coherent protest and appeal procedures that are congruent with Small Business Administration regulations.

This final rule will have no direct negative impact on any small business concern, since it is aimed at preventing other than small business concerns from receiving or performing contracts set aside for small business concerns. This rule will indirectly benefit small business concerns by preventing awards to ineligible concerns, or shortening the length of time other than small business concerns perform small business set-aside contracts.

Item III—Allowability of Legal Costs for Whistleblower Proceedings (FAR Case 2013–017)

This finalizes an interim rule that revised the cost principle at FAR 31.205–47 to implement sections 827(g) and 828(d) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239). The cost principle addresses the allowability of legal costs incurred by a contractor or subcontractor in connection with a whistleblower protection proceeding commenced by a contractor or subcontractor employee submitting a complaint of reprisal under the applicable whistleblower statute. The cost principle is revised in the final rule to allow reasonable legal proceeding costs in certain settlements. Because most contracts awarded to small businesses are awarded on a competitive, fixed-price basis, thus limiting their exposure to the cost principles, the impact of this interim rule on small businesses will be minimal.

Item IV—Technical Amendments

Editorial changes are made at FAR 4.605, 4.1601, and 32.009–1. The change at 32.009–1 shows the recent extension of the policy to provide accelerated payment to small business subcontractors.

Dated: July 18, 2014.

William Clark,

Acting Director, Office of Government-Wide Acquisition Policy, Office of Acquisition Policy, Office of Government-Wide Policy.

Federal Acquisition Circular (FAC) 2005–76 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–76 is effective July 25, 2014 except for item II, which is effective August 25, 2014.

Dated: July 18, 2014.

Richard Ginman,

Director, Defense Procurement and Acquisition Policy.

Dated: July 18, 2014.

Jeffrey A. Koses,
Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Dated: July 21, 2014.

William P. McNally,
Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 2014–17496 Filed 7–24–14; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 22, and 52

[FAC 2005–76; FAR Case 2014–013; Item I; Docket 2014–0013, Sequence 1]

RIN 9000–AM76

Federal Acquisition Regulation: Equal Employment and Affirmative Action for Veterans and Individuals With Disabilities

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement final rules issued by the Office of Federal Contract Compliance Programs at the Department of Labor (DOL) relating to equal opportunity and affirmative action for veterans and individuals with disabilities.

DATES: *Effective:* July 25, 2014.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before September 23, 2014 to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by FAC 2005–76, FAR Case 2014–013, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2014–013'' Select the link ''Comment Now'' that corresponds with ''FAR Case 2014–013.'' Follow the instructions provided at the ''Comment Now'' screen. Please include your name, company name (if any), and ''FAR Case 2014–013'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd floor, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–76, FAR Case 2014–013, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, at 202–501–0650 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–76, FAR Case 2014–013.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are issuing an interim rule amending the FAR to implement two DOL final rules that were published in the **Federal Register** on September 24, 2013 at 78 FR 58614 and at 78 FR 58682 as follows:

- ''Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans, Veterans of the Vietnam Era, Disabled Veterans, Recently Separated Veterans, Active Duty Wartime or Campaign Badge Veterans, and Armed Forces Service Medal Veterans'', which amended DOL regulations at 41 CFR parts 60–250 and 60–300 (78 FR 58614).
- ''Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals with Disabilities'', which amended DOL regulations at 41 CFR part 60–741 (78 FR 58682).

II. Discussion and Analysis

A. Subpart 22.13—Equal Opportunity for Veterans

This interim rule amends the definitions in FAR subpart 22.13 to conform to the definitions in 41 CFR 60–300.2.

- Adds a definition of ''active duty wartime or campaign badge veteran,'' which replaces the definition of ''other protected veteran.'' The only change is in the definition title.
- Adds a definition of ''protected veteran.''
- Expands policy at FAR 22.1302 to address appropriate outreach and recruitment, and hiring benchmarks.

B. Subpart 22.14—Employment of Workers With Disabilities

The interim rule amends FAR subpart 22.14 to conform to DOL regulations at 41 CFR part 60–741.

- Changes references to the title of the FAR clause at 52.222–36 to ''Equal Opportunity for Workers with Disabilities''.
- Changes the responsible official at DOL to the ''Director of Federal Contract Compliance Programs'' (Director of OFCCP).
- Expands policy at FAR 22.1401 to address appropriate outreach and recruitment, and utilization goals, as prescribed in the regulations of the Secretary of Labor.
- Amends the waiver authority at FAR 22.1403 to be the Director of the Office of Federal Contract Compliance Programs to conform to the Department of Labor regulations. Also revises the policy at FAR 22.1403(b) concerning national security waivers to conform to the DOL regulations.

C. Clauses

The DOL regulations contain two revised Equal Opportunity clauses at 41 CFR 60–300.5 (relating to veterans) and 41 CFR 60–741.5 (relating to individuals with disabilities).

- The clause for Equal Opportunity for VEVRAA Protected Veterans provides clarification of mandatory listing of employment openings and posting of notices, in paragraphs 2, 4, 9, and 12 of 41 CFR 60–300.5(a).
- The clause for Equal Opportunity for Workers with Disabilities adds some requirements with regard to posting in electronic format and making notices accessible to persons with disabilities, in paragraphs 4 and 7 of 41 CFR 60–741.5(a).
- Both clauses add requirements with regard to contractor solicitations or advertisements for employees, requiring inclusion of statements that all qualified applicants will receive consideration for employment, without regard to their protected veteran status; and that qualified applicants will not be discriminated against on the basis of disability.

At 41 CFR 60–300.5(d) and 41 CFR 60–741.5(d), each entitled ''Inclusion of the equal opportunity clause in the contract,'' the DOL regulations provide that it is not necessary to include the equal opportunity clause verbatim in the contract (as had been considered in the proposed rule), but that the clause shall be made a part of the contract by citation to 41 CFR 60–300.5(a) and 41 CFR 60–741.5(a) respectively, and then provides a short paragraph that must be

included after the citation, providing a brief summary that highlights to contractors and subcontractors the nature of their obligation, *i.e.;*

- This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractor and subcontractors to employ and advance in employment qualified protected veterans; and
- This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

Therefore, in the interim FAR rule, the clauses at FAR 52.222–35, Equal Opportunity for Veterans, and 52.222–36, Equal Opportunity for Workers with Disabilities, do not repeat the entire equal opportunity clauses from the DOL regulations. Instead, each clause provides a citation to the applicable clause in the DOL regulations and includes a statement that summarizes the contractors' top level obligations under each clause. The FAR clauses must be incorporated in the contract in full text, as required by the DOL regulations.

Because some of the definitions and clause flowdown are not included within the equal opportunity clauses in the DOL regulations, the FAR clause 52.222–35 adds a paragraph to reference the appropriate definitions at FAR 22.1301, relating to types of veterans, and both 52.222–35 and 52.222–36 include a final paragraph requiring clause flowdown.

At 41 CFR 60–300.5(e) and 41 CFR 60–741.5(e), each paragraph entitled ''Incorporation by Operation of the Act,'' the DOL regulations state that the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the Act and the regulation to include such clause, whether or not it is physically incorporated in such contract.

A minor conforming change has been made to the clause at FAR 52.222–37, Employment Reports on Veterans, to add a definition of ''active duty wartime or campaign badge veterans,'' because the term ''other protected veterans'' is no longer defined in FAR subpart 22.13. However, the term ''other protected veterans'' still appears on the VETS–100 report, so the term is explained as equivalent in meaning to ''active duty wartime or campaign badge veterans.'' The FAR clause 52.222–37 has also been added to the lists at 52.212–5(e) and 52.244–6 to require flowdown to commercial subcontracts.

D. Additional Contractor Duties

The DOL regulations mandate in 41 CFR part 60 additional duties that contractors must perform. Contractors must consult the DOL regulations at 41 CFR parts 60–250, 60–300, and 60–741 to understand their full obligations. The contract clause does not include detail on the duties.

E. Threshold

This rule does not change the threshold for applicability of FAR subpart 22.13 and the associated clause at 52.222–35, which is $100,000. Nor does it change the threshold for applicability of FAR subpart 22.14 and the associated clause at 52.222–36, which is $15,000. The thresholds for these clauses are set by statute. FAR 1.109 explains the statutory requirement, now codified at 41 U.S.C. 1908, for the FAR Council to subsequently adjust all the acquisition-related statutory thresholds for inflation, every five years in October.

Although the statute (section 503 of the Rehabilitation Act of 1973) (29 U.S.C. 793) originally established a threshold of $10,000, relating to equal opportunity for workers with disabilities, this was adjusted to $15,000 in October 2010. The threshold adjustment was discussed with DOL/OFCCP and they concurred with this change. The threshold of $100,000 relating to equal opportunity for veterans was not adjusted in 2010 because the inflationary adjustment resulted in an increase that was insufficient to justify an adjustment to the next threshold level.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Both rules issued by the Department of Labor were determined to be economically significant under E.O. 12866, and major rules under 5 U.S.C. 804. The Regulatory Impact Analysis for these rules was published in the **Federal Register** on September 24, 2013 at 78 FR 59643 and at 78 FR 58714. The FAR rule adds no new information collections, recordkeeping, or other compliance burdens. The FAR rule cites to the DOL OMB Control numbers 1250–0004 and 1250–0005 for OMB approval under the PRA for any information collection requirements associated with revised FAR 52.222–35 (Equal Opportunity for Veteran) and 52.225–36 (Equal Opportunity for Workers with Disabilities). As explained in the section on clauses (II.C.) above, the FAR clauses, to be incorporated in solicitations and contracts in full text, include the required summary statement (paragraph (b) and (a) of each of the FAR clauses, respectively) and then reference to the DOL clauses. There is no economic impact arising from the FAR rule, since the FAR rule only informs the contractors of the requirements of the DOL rules. Further, each DOL rule states that ''By operation of the Act, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the Act and the regulations in this part to include such a clause, whether or not it is physically incorporated in such contract . . .'' (41 CFR 60–300.5(e) and 60–741.5(e)). So the FAR is not actually imposing any requirement, but for consistency is incorporating this guidance and informing the contractor of existing requirements.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows:

This interim rule is being issued to implement changes to 41 CFR 60–25, 60–300, and 60–741, as published in the **Federal Register** on September 24, 2013 at 78 FR 58614 and at 78 FR 58682 by the Office of Federal Contract Compliance Programs of the Department of Labor (DOL).

The DOL rules revise the current regulations implementing 38 U.S.C. 4211 and 4212, and the nondiscrimination and affirmative action regulations of section 503 of the Rehabilitation Act of 1973, as amended. The DOL rules add requirements on mandatory job listings, data collection, and establishing hiring benchmarks.

With regard to equal opportunity for veterans, DOL estimated that the approximate number of small entities that would be subject to the rule would be 20,490

federal contractors with between 50 and 500 employees (approximately 44 percent of the total Federal contractors impacted by the rule).

With regard to equal opportunity for individuals with disabilities, DOL estimated that the final rule impacts 20,490 Federal contractors with between 50 and 500 employees (approximately 44 percent of total Federal contractors impacted by the rule).

This FAR rule does not add any new reporting, recordkeeping, or other compliance burdens. The FAR rule makes contracting officers and contractors aware of the DOL requirements.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD, GSA, and NASA are not aware of any significant alternatives to the rule which would accomplish the stated objectives of implementing the DOL final rules, while minimizing impact on small entities. DoD, GSA, and NASA do not have the flexibility of making any changes to the DOL rules, which have already been published for public comment and are now taking effect as final rules. There is no significant impact on small entities imposed by the FAR rule.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–76, FAR Case 2014–013) in correspondence.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C chapter 35) does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved for the DOL regulations under OMB Control Numbers 1250–004, titled: OFCCP Recordkeeping and Reporting Requirements—38 U.S.C. 4212, Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; 1250–005, titled: OFCCP Recordkeeping and Reporting Requirements—Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 703; and 1293–0005, titled: Federal Contractor Veterans' Employment Report, VETS–100/VETS–100A.

VI. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the Department of Labor rules became effective on March 24, 2014. The DOL rules were published for public comment prior to publication of the final rules. Further, each DOL rule states that ''By operation of the Act, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the Act and the regulations in this part to include such a clause, whether or not it is physically incorporated in such contract . . .'' (41 CFR 60–300.5(e) and 60–741.5(e)). However, the FAR does provide government-wide policy and procedures to contractors and even though the FAR rule only informs the contractors of DOL's requirements, and it is not actually imposing any new requirements, immediate implementation in the FAR is necessary to provide awareness and ensure compliance across all agencies and contractors, respectively. The FAR rule adds no new information collections, recordkeeping, or other burdens. If the FAR rule is not issued as an interim rule, which becomes effective upon publication, the incorporation of the new clauses in solicitations and contracts would be delayed, and contractors may not be aware of DOL's regulatory changes with regard to the employment of and outreach methods used to hire veterans and workers with disabilities under these new rules.

However, pursuant to 41 U.S.C. 1707, DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 1, 22, and 52

Government procurement.

Dated: July 18, 2014.

William Clark,

Acting Director, Office of Government-Wide Acquisition Policy, Office of Acquisition Policy, Office of Government-Wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 22, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 22, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106, in the table following the introductory text, by—

■ a. Removing from FAR segment 22.13 OMB Control Number ''1215–0072'' and adding ''1250–0004'' in its place;

■ b. Removing from FAR segment 22.14 OMB Control Number ''1215–0072'' and adding ''1250–0005'' in its place; and

■ c. Removing from FAR segments 52.222–35 and 52.222–36 OMB Control Number ''1215–0072'' and adding ''1250–0004'' and ''1250–0005'' in their places, respectively.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1300 [Amended]

■ 3. Amend section 22.1300 by removing from paragraph (e) ''part 60–250,''.

■ 4. Amend section 22.1301 by adding, in alphabetical order, the definitions ''Active duty wartime or campaign badge veteran'' and ''Protected veteran''; and removing the definition ''Other protected veteran''.

The additions read as follows:

22.1301 Definitions.

* * * * *

Active duty wartime or campaign badge veteran means a veteran who served on active duty in the U.S. military, ground, naval, or air service, during a war or in a campaign or expedition for which a campaign badge has been authorized under the laws administered by the Department of Defense.

* * * * *

Protected veteran means a veteran who is protected under the non-discrimination and affirmative action provisions of 38 U.S.C. 4212; specifically, a veteran who may be classified as a ''disabled veteran,'' ''recently separated veteran,'' ''active duty wartime or campaign badge veteran,'' or an ''Armed Forces service medal veteran,'' as defined by this section.

* * * * *

■ 5. Amend section 22.1302 by revising paragraph (a) to read as follows:

22.1302 Policy.

(a) Contractors and subcontractors, when entering into contracts and subcontracts subject to the Act, are required to—

(1) List all employment openings, with the appropriate employment service delivery system where the opening occurs, except for—

(i) Executive and senior management positions;

(ii) Positions to be filled from within the contractor's organization; and

(iii) Positions lasting three days or less;

(2) Take affirmative action to employ, advance in employment, and otherwise treat qualified individuals, including qualified disabled veterans, without discrimination based upon their status as a protected veteran, in all employment practices;

(3) Undertake appropriate outreach and positive recruitment activities that are reasonably designed to effectively recruit protected veterans; and

(4) Establish a hiring benchmark and apply it to hiring of protected veterans in each establishment, on an annual basis, in the manner prescribed in the regulations of the Secretary of Labor.

* * * * *

■ 6. Amend section 22.1310 by—

■ a. Revising paragraph (a)(1)(ii); and

■ b. Removing from paragraph (a)(2) ''Programs'' and adding ''Programs of the U.S. Department of Labor'' in its place.

The revision reads as follows:

22.1310 Solicitation provision and contract clauses.

* * * * *

(a)(1) * * *

(ii) The Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, has waived, in accordance with 22.1305(a), or the head of the agency has waived, in accordance with 22.1305(b), all of the terms of the clause.

* * * * *

22.1400 [Amended]

■ 7. Amend section 22.1400 by removing ''implementing Section'' and adding ''implementing section'' in its place.

■ 8. Revise section 22.1401 to read as follows:

22.1401 Policy.

Contractors and subcontractors, when entering into contracts and subcontracts subject to the Act, are required to—

(a) Take affirmative action to employ, and advance in employment, qualified individuals with disabilities, and to otherwise treat qualified individuals without discrimination based on their physical or mental disability;

(b) Undertake appropriate outreach and positive recruitment activities that are reasonably designed to effectively recruit qualified individuals with disabilities; and

(c) Compare the utilization of individuals with disabilities in their workforces to the utilization goal, as prescribed in the regulations of the Secretary of Labor, on an annual basis.

22.1402 [Amended]

■ 9. Amend section 22.1402 by removing from paragraphs (a) and (b) ''Affirmative Action'' and adding ''Equal Opportunity'' in their places.

■ 10. Amend section 22.1403 by—

■ a. Revising the introductory text of paragraph (a);

■ b. Revising paragraph (b); and

■ c. Removing from paragraph (d) ''Deputy Assistant Secretary'' and adding ''Director of OFCCP'' in its place.

The revisions read as follows:

22.1403 Waivers.

(a) The Director of the Office of Federal Contract Compliance Programs of the U.S. Department of Labor (Director of OFCCP), may waive the application of any or all of the terms of the clause at 52.222–36, Equal Opportunity for Workers with Disabilities, for—

* * * * *

(b) The head of an agency may waive any requirement in this subpart when it is determined that the contract is essential to the national security, and that its award without complying with such requirements is necessary to the national security. Upon making such a determination, the head of the agency shall notify the Director of OFCCP in writing within 30 days.

* * * * *

22.1405 [Amended]

■ 11. Amend section 22.1405 by removing ''Affirmative Action'' and adding ''Equal Opportunity'' in its place.

■ 12. Revise section 22.1406 to read as follows:

22.1406 Complaint procedures.

(a) Following agency procedures, the contracting office shall forward any complaints received about the administration of the Act to—

(1) Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; or

(2) Any OFCCP regional or area office.

(b) The OFCCP shall institute investigation of each complaint and shall be responsible for developing a complete case record.

22.1407 [Amended]

■ 13. Amend section 22.1407 by removing from the introductory text ''Affirmative Action'' and adding ''Equal Opportunity'' in its place.

22.1408 [Amended]

■ 14. Amend section 22.1408 by—

■ a. Removing from paragraph (a) introductory text ''Affirmative Action'' and adding ''Equal Opportunity'', in its place; and

■ b. Removing from paragraphs (a)(2) and (b) ''agency head'' and adding ''Director of OFCCP or agency head'', in their places.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 15. Amend section 52.212–5 by—

■ a. Revising the date of the clause;

■ b. Revising paragraphs (b)(32) through (34);

■ c. Revising paragraphs (e)(1)(v) and (e)(1)(vi);

■ d. Redesignating paragraphs (e)(1)(vii) through (e)(1)(xv) as paragraphs (e)(1)(viii) through (e)(1)(xvi), respectively; and

■ e. Adding a new paragraph (e)(1)(vii); and

■ f. Amending Alternate II by—

■ 1. Revising the date of the Alternate; and

■ 2. Revising paragraphs (e)(1)(ii)(E) and (F).

The revisions and additions read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (July 2014)

* * * * *

(b) * * *

____(32) 52.222–35, Equal Opportunity for Veterans (July 2014) (38 U.S.C. 4212).

____(33) 52.222–36, Equal Opportunity for Workers with Disabilities (July 2014) (29 U.S.C. 793).

____(34) 52.222–37, Employment Reports on Veterans (July 2014) (38 U.S.C. 4212).

* * * * *

(e)(1) * * *

(v) 52.222–35, Equal Opportunity for Veterans (July 2014) (38 U.S.C. 4212).

(vi) 52.222–36, Equal Opportunity for Workers with Disabilities (July 2014) (29 U.S.C. 793).

(vii) 52.222–37, Employment Reports on Veterans (July 2014) (38 U.S.C. 4212).

* * * * *

Alternate II (July 2014). * * *

* * * * *

(e)(1) * * *

(ii) * * *

(E) 52.222–35, Equal Opportunity for Veterans (July 2014) (38 U.S.C. 4212).

(F) 52.222–36, Equal Opportunity for Workers with Disabilities (July 2014) (29 U.S.C. 793).

* * * * *

■ 16. Amend section 52.213–4 by revising the date of the clause and paragraphs (a)(2)(viii), (b)(1)(iv), (b)(1)(v), and (b)(1)(vi) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (July 2014)

(a) * * *

(2) * * *

(viii) 52.244–6, Subcontracts for Commercial Items (July 2014).

* * * * *

(b) * * *

(1) * * *

(iv) 52.222–35, Equal Opportunity for Veterans (July 2014) (38 U.S.C. 4212) (applies to contracts of $100,000 or more).

(v) 52.222–36, Equal Employment for Workers with Disabilities (July 2014) (29 U.S.C. 793). (Applies to contracts over $15,000, unless the work is to be performed outside the United States by employees recruited outside the United States.) (For purposes of this clause, ''United States'' includes the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)

(vi) 52.222–37, Employment Reports on Veterans (July 2014) (38 U.S.C. 4212) (applies to contracts of $100,000 or more).

* * * * *

■ 17. Revise section 52.222–35 to read as follows:

52.222–35 Equal Opportunity for Veterans.

As prescribed in 22.1310(a)(1), insert the following clause:

Equal Opportunity for Veterans (July 2014)

(a) *Definitions.* As used in this clause—

''Active duty wartime or campaign badge veteran,'' ''Armed Forces service medal veteran,'' ''disabled veteran,'' ''protected veteran,'' ''qualified disabled veteran,'' and ''recently separated veteran'' have the meanings given at FAR 22.1301.

(b) *Equal opportunity clause.* The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60–300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.

(c) *Subcontracts.* The Contractor shall insert the terms of this clause in subcontracts of $100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

(End of clause)

Alternate I (July 2014). As prescribed in 22.1310(a)(2), add the following as a preamble to the clause:

Notice: The following term(s) of this clause are waived for this contract: _____ [*List term(s)*].

■ 18. Revise section 52.222–36 to read as follows:

52.222–36 Equal Opportunity for Workers with Disabilities.

As prescribed in 22.1408(a), insert the following clause:

Equal Opportunity for Workers with Disabilities (July 2014)

(a) *Equal opportunity clause.* The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60–741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

(b) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of $15,000 unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

(End of clause)

Alternate I (July 2014). As prescribed in 22.1408(b), add the following as a preamble to the clause:

Notice: The following term(s) of this clause are waived for this contract: _____ [*List term(s)*].

■ 19. Amend section 52.222–37 by revising the date of the clause and paragraphs (a), (b)(1), and (2) to be read as follows:

52.222–37 Employment Reports on Veterans.

* * * * *

Employment Reports on Veterans (July 2014)

(a) Definitions. As used in this clause, ''Armed Forces service medal veteran,'' ''disabled veteran,'' ''active duty wartime or campaign badge veteran,'' and ''recently separated veteran,'' have the meanings given in FAR 22.1301.

(b) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—

(1) The total number of employees in the contractor's workforce, by job category and hiring location, who are disabled veterans, other protected veterans (*i.e.,* active duty wartime or campaign badge veterans), Armed Forces service medal veterans, and recently separated veterans;

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of disabled veterans, other protected veterans (*i.e.,* active duty wartime or campaign badge veterans), Armed Forces service medal veterans, and recently separated veterans; and

* * * * *

■ 20. Amend section 52.244–6 by—

■ a. Revising the date of the clause;

■ b. Revising paragraphs (c)(1)(v) and (vi);

■ c. Redesignating paragraphs (c)(1)(vii) through (c)(1)(xi) as paragraphs (c)(1)(viii) through (c)(1)(xii), respectively;

■ d. Adding new paragraph (c)(1)(vii);

The revised and added text reads as follows:

52.244–6 Subcontracts for Commercial Items.

* * * * *

Subcontracts for Commercial Items (July 2014)

* * * * *

(c)(1) * * *

(v) 52.222–35, Equal Opportunity for Veterans (July 2014) (38 U.S.C. 4212(a));

(vi) 52.222–36, Equal Opportunity for Workers with Disabilities (July 2014) (29 U.S.C. 793).

(vii) 52.222–37, Employment Reports on Veterans (July 2014) (38 U.S.C. 4212).

* * * * *

[FR Doc. 2014–17498 Filed 7–24–14; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 13, 14, 15, and 19

[FAC 2005–76; FAR Case 2012–014; Item II; Docket 2012–0014, Sequence 1]

RIN 9000–AM46

Federal Acquisition Regulation; Small Business Protests and Appeals

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement the Small Business Administration's revision of the small business size and small business status protest and appeal procedures.

DATES: *Effective:* August 25, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Karlos Morgan, Procurement Analyst, at 202–501–2364, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–76, FAR Case 2012–014.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 78 FR 14746 on March 7, 2013, to update the small business size and small business status protest and appeal procedures, protest and appeal timeframes, and to address the application of the Small Business Administration's (SBA) decisions on a protested concern's size and other small business status determinations. These changes are consistent with SBA's final rule published in the **Federal Register** at 76 FR 5680 on February 2, 2011, that amended SBA's regulations to clarify the effect, across all small business programs, of initial and appeal eligibility decisions; and SBA's interim final rule, published in the **Federal Register** at 77 FR 1857 on January 12, 2012, that amended its regulations pertaining to the Women-Owned Small Business Federal Contract Program so that its protest and appeal procedures would be consistent with all other small business programs.

In addition, this rule restructures sections of the FAR that address small business status protest and appeal procedures. This restructuring of the FAR text provides uniformity to the protest and appeals guidance provided at FAR 19.306, Protesting a firm's status as a HUBZone small business concern, FAR 19.307, Protesting a firm's status as a service-disabled veteran-owned small business concern, and FAR 19.308, Protesting a firm's status as an economically disadvantaged women-owned small business (EDWOSB) concern or women-owned small business (WOSB) concern eligible under the WOSB Program. This rule also updates the protest and appeals guidance found at FAR 19.302, Protesting a small business representation or rerepresentation.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the comments in the development of the final rule. Two respondents submitted comments. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

The revisions made at FAR 19.001 and FAR 19.102(f) pertaining to the nonmanufacturer rule as identified in the proposed rule published in the **Federal Register** at 78 FR 14746 on March 7, 2013, have been removed. Based on the public comments received, it was determined that greater clarification regarding changes to the nonmanufacturer rule is warranted. However, a non-manufacturer must still meet the requirements of 13 CFR 121.406.

B. Analysis of Public Comments

1. Clarity in the Definition and Application of the Nonmanufacturer Rule

Comment: Two respondents expressed concern with the definition and application of the nonmanufacturer rule. One respondent suggested the need for greater clarity in the application of the nonmanufacturer rule. A second respondent suggested that the language pertaining to the nonmanufacturing rule be republished to allow the entire range of interested parties to review and submit comments.

Response: Based on the public comments received, it was determined that greater clarification regarding changes to the nonmanufacturer rule is warranted. Therefore, the proposed changes to the nonmanufacturer rule definition at FAR 19.001 and the nonmanufacturer rule at FAR 19.102(f) have not been incorporated into this final rule.

2. Wholesale Trade or Retail Trade North American Industry Classification System (NAICS) Codes

Comment: One respondent commented that changes to FAR 19.303, Determining North American Industry Classification System codes and size standards, more specifically the wholesale trade or retail trade NAICS code revision, should have been prominently highlighted in the proposed rule.

Response: SBA's regulations provide that acquisitions for supplies must be classified under the appropriate manufacturing NAICS code, not under a wholesale trade NAICS code. SBA size regulations provide that acquisitions for supplies also cannot be classified under a retail trade NAICS code. SBA provided further clarification in its final rule, published in the **Federal Register** at 76 FR 8222 on February 11, 2011, that retail trade NAICS codes are appropriate for financial assistance (*e.g.,* loans), but not for the procurement of specified supply items. Although this has been long standing in SBA regulations, based on the public comments received, and data from the Federal Procurement Data System regarding the use of Wholesale Trade or Retail Trade NAICS for the procurement of specified supply items, it was determined that further analysis is needed to determine the impact this change will have on small businesses. Therefore, the respondent's proposed changes to FAR 19.303(a)(2) have not been incorporated into this final rule.

3. Recommend SBA Change Its Certification Process From ''Self'' to SBA Certification

Comment: One respondent recommended SBA change its certification process from ''self'' to SBA certification. The respondent commented that increasing the amount of time for the SBA to work a size status protest does not fix the cause of a protest. According to the respondent, if the SBA would change the certification process from self to SBA-certification, we could eliminate the majority, if not all, of the ''nearly 500 size protests each fiscal year.''

Response: This comment is outside the scope of this case. The authority to change the certification process is within the purview of SBA, not the FAR Council.

4. Addition of the Phrase ''Whether Timely or Not'' at FAR 19.302(c)(1)

Comment: One respondent wrote approvingly of the addition of the phrase ''whether timely or not'' to FAR 19.302(c)(1) and suggested the text of FAR 19.302(j) be appended to the end of FAR 19.302(c)(1) to make it clear that untimely protests will not be considered on the instant acquisition.

Response: The phrase ''whether timely or not'' in FAR 19.302(c)(1) predates this proposed rule. Furthermore, FAR 19.302(j) already clearly and effectively provides that an untimely protest cannot be considered on the instant acquisition. It is unnecessary to reiterate this in the text of FAR 19.302(c)(1).

5. Limitations on SBA's Ability To File a Protest Before or After Award

Comment: One respondent suggested that SBA does not have the entire facts of an acquisition, and is not in a position to file a bona fide protest before or after award (unlike the PCO). The respondent further commented that, as written, any SBA employee could file a protest throughout the entire program performance period.

Response: This comment is outside the scope of this case. The regulatory authority for SBA to file a protest ''before or after'' award is found at 13 CFR 121.1004(b).

6. Clarify How a Contracting Officer Determines the Principal Purpose of an Acquisition

Comment: One respondent commented that the addition of new language in FAR 19.303(a)(2) too narrowly describes how the procuring contracting officer determines the ''principal purpose of the acquisition.'' The respondent further commented that 13 CFR 121.402 includes other considerations given to the industry descriptions in the NAICS United States Manual, the product or service description in the solicitation and any attachments to it, the relative value and importance of the components of the procurement making up the end item being produced, and the function of the goods or services being purchased.

Response: Additional language has been added to FAR 19.303 to further clarify how to select a NAICS code that best describes the principal purpose of the product or service being acquired.

7. Delete the Word ''Affecting'' and Use ''Changing'' in Its Place at FAR 19.303

Comment: One respondent recommended that FAR 19.303 be revised to remove the word ''affecting'' and in its place add the word ''changing''. The respondent stated that affecting is too difficult a term to define whereas changing is a known term.

Response: The language as written is consistent with SBA regulations at 13 CFR 134.302.

8. Delete the Words ''Any Person'' and Use ''Any Offeror'' at 19.303(c)(2)(i)

Comment: One respondent recommended that the FAR Council remove the phrase ''Any person'' and replace with the term ''Any offeror''. The respondent commented that the use of any person was too broad.

Response: The language as written is consistent with SBA regulations at 13 CFR 134.302.

9. SBA Authority To File a NAICS Appeal at Any Time Before Offers Are Due

Comment: One respondent commented that the language at FAR 19.303 regarding SBA's authority to file a NAICS appeal at any time before offers are due should be deleted as 13 CFR 134.302 does not give the SBA broad authority to file a NAICS appeal at any time before offers are due.

Response: The language as written is consistent with SBA regulations at 13 CFR 134.304.

10. Notice of NAICS Code Appeals

Comment: One respondent suggested that the instruction to withhold contract award upon receipt of notification of a NAICS code challenge be removed from FAR 19.303(c)(8) as the respondent believes SBA has no authority to require a contracting officer to withhold a contract award under these circumstances.

Response: SBA regulations at 13 CFR 121.1103(c)(1)(i) require a contracting officer to stay contract award when notice of a NAICS code appeal is received. However, language was added to provide contracting officers some flexibility to address situations where withholding award is not in the best interests of the Government.

C. Other Changes

The final rule provides additional guidance in FAR 19.306, 19.307, and 19.308 regarding protests of small business program status. This guidance further clarifies that the contracting officer is required to prepare a written determination(s) documenting the decision to (1) proceed with a contract award when the apparent successful offeror's program eligibility has been protested; and (2) not terminate a contract when award has been made to the protested contractor and SBA subsequently issues a negative program eligibility decision, or SBA's decision of negative program eligibility is upheld on appeal.

This final rule also includes a revision to FAR 4.604 requiring contracting officers to update the Federal Procurement Data System (FPDS) to reflect the final decision of the SBA regarding a small business size determination in accordance with SBA regulations at 13 CFR 121.1009.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The change may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This final rule amends the FAR to provide revised regulatory coverage for small business size and small business status protest and appeal procedures and to ensure that the FAR contains consistent and coherent protest and appeal procedures that are congruent with SBA regulations.

The objective of this final rule is to provide FAR procedures to ensure that contracts set aside for small businesses are awarded to eligible small business concerns. Under the Small Business Act, the SBA is authorized to establish the size of a business entity (15 U.S.C. 632), make small business size and status determinations, and rule on small business size and status appeals. Revisions to the FAR are necessary to be harmonious with SBA regulations on formal size determinations and small business status protest and appeals procedures. There were no significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis.

This final rule will have no direct negative impact on any small business concern, since it is aimed at preventing other than small

business concerns from receiving or performing contracts set aside for small business concerns. This rule will indirectly benefit small business concerns by preventing awards to ineligible concerns, or shortening the length of time other than small business concerns perform small business set-aside contracts.

SBA processes nearly 500 size protests each fiscal year, resulting in 41 percent being determined to be small and 26 percent determined to be other than small. The rest are dismissed on procedural grounds. Thus, the number of concerns that could be affected by this rule, regardless of size, is approximately 335 per year (67 percent of 500).

This final rule will not impose any new information collection requirement on small businesses. This rule will require contracting officers to update Federal procurement databases to reflect final agency status decisions. Contracting officers should currently be updating these databases. This rule clarifies that this must be accomplished.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There were no alternatives considered because there is no other means to accomplish the stated objectives of the rule.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 4, 13, 14, 15, and 19

Government procurement.

Dated: July 18, 2014.

William F. Clark,

Acting Director, Office of Government-Wide Acquisition Policy, Office of Acquisition Policy, Office of Government-Wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 4, 13, 14, 15, and 19 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 13, 14, 15, and 19 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 4—ADMINISTRATIVE MATTERS

■ 2. Amend section 4.604 by revising paragraph (b)(4) and adding paragraph (b)(5) to read as follows:

4.604 Responsibilities.

* * * * *

(b) * * *

(4) When the contracting office receives written notification that a contractor has changed its size status in accordance with the clause at 52.219–28, Post-Award Small Business Program Rerepresentation, the contracting officer shall update the size status in FPDS within 30 days after receipt of contractor's notification of rerepresentation.

(5) If after award of a contract, the contracting officer receives written notification of SBA's final decision on a protest concerning a size determination, the contracting officer shall update FPDS to reflect the final decision.

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.102 [Amended]

■ 3. Amend section 13.102 by removing from the end of paragraph (a)(3) ''Woman-owned'' and adding ''Women-owned'' in its place.

PART 14—SEALED BIDDING

14.502 [Amended]

■ 4. Amend section 14.502 by removing from paragraph (b)(7) ''woman-owned'' and ''Woman-Owned'' and adding ''women-owned'' and ''Women-Owned'' in their places, respectively.

PART 15—CONTRACTING BY NEGOTIATION

15.503 [Amended]

■ 5. Amend section 15.503 by removing from paragraph (a)(2)(i)(E) ''Woman-Owned'' and adding ''Women-Owned'' in its place.

PART 19—SMALL BUSINESS PROGRAMS

■ 6. Amend section 19.102 by—

■ a. Revising the last sentence in paragraph (f)(1);

■ b. Removing from paragraph (f)(2) ''is accounted'' and adding ''are accounted'' in its place; and

■ c. Revising paragraph (f)(4) to read as follows:

19.102 Size standards.

* * * * *

(f) * * *

(1) * * * However, see the limitations on subcontracting at 52.219–14 that apply to any small business offeror other than a nonmanufacturer for purposes of set-asides and 8(a) awards, 52.219–3 for HUBZone set-asides and HUBZone sole source awards, 52.219–27 for SDVOSB set-asides and SDVOSB sole source awards, 52.219–29 for economically disadvantaged women-owned small business set-asides, and 52.219–30 for set-asides for women-owned small business concerns eligible under the women-owned small business program.

* * * * *

(4) In the case of acquisitions set aside for small business or awarded under section 8(a) of the Small Business Act, when the acquisition is for a specific product (or a product in a class of products) for which the SBA has determined that there are no small business manufacturers or processors in the Federal market, then the SBA may grant a class waiver so that a nonmanufacturer does not have to furnish the product of a small business. For the most current listing of classes for which SBA has granted a waiver, contact an SBA Office of Government Contracting. A listing is also available on SBA's Internet Homepage at *http://www.sba.gov/content/class-waivers.* Contracting officers may request that the SBA waive the nonmanufacturer rule for a particular class of products. For procedures in requesting a waiver see 13 CFR 121.1204.

* * * * *

■ 7. Amend section 19.302 by—

■ a. Revising paragraphs (a) and (c)(1);

■ b. Adding paragraph (c)(3);

■ c. Removing from the introductory text of paragraph (d)(1) introductory text ''the 5th'' and adding ''the fifth'' in its place;

■ d. Revising paragraphs (d)(1)(i), (d)(1)(ii), and (d)(2);

■ e. Adding paragraph (d)(4);

■ f. Removing paragraph (f);

■ g. Redesignating paragraphs (g) through (k) as paragraphs (f) through (j), respectively; and

■ h. Revising the newly designated paragraphs (f) through (i).

The revisions and additions read as follows:

19.302 Protesting a small business representation or rerepresentation.

(a)(1) The Small Business Administration (SBA) regulations on small business size and size protests are found at 13 CFR part 121.

(2) An offeror, the SBA, or another interested party may protest the small business representation of an offeror in a specific offer. However, for competitive 8(a) contracts, the filing of a protest is limited to an offeror, the contracting officer, or the SBA.

* * * * *

(c)(1) Any contracting officer who receives a protest, whether timely or not, or who, as the contracting officer, wishes to protest the small business representation of an offeror, or

rerepresentation of a contractor, shall promptly forward the protest to the SBA Government Contracting Area Director at the Government Contracting Area Office serving the area in which the headquarters of the offeror is located.

* * * * *

(3) The protest shall include a referral letter written by the contracting officer with information pertaining to the solicitation. The referral letter must include the following information to allow SBA to determine timeliness and standing:

(i) The protest and any accompanying materials.

(ii) A copy of the size self-certification.

(iii) Identification of the applicable size standard.

(iv) A copy or an electronic link to the solicitation and any amendments.

(v) The name, address, telephone number, email address, and fax number of the contracting officer.

(vi) Identification of the bid opening date or the date of notification provided to unsuccessful offerors.

(vii) The date the contracting officer received the protest.

(viii) A complete address and point of contact for the protested concern.

(d) * * *

(1) * * *

(i) A protest may be made orally if it is confirmed in writing and received by the contracting officer within the 5-day period or by letter postmarked no later than 1 business day after the oral protest.

(ii) A protest may be made in writing if it is delivered to the contracting officer by hand, telegram, mail, facsimile, email, express or overnight delivery service.

(2) Except as provided in paragraph (d)(4) of this section, a protest filed by the contracting officer or SBA is always considered timely whether filed before or after award.

* * * * *

(4) A protest filed before bid opening, or notification to offerors of the selection of the apparent successful offeror, will be dismissed as premature by SBA.

* * * * *

(f)(1) Within 15 business days after receipt of a protest or request for a formal size determination or within any extension of time granted by the contracting officer the SBA Area Office will determine the size status of the challenged concern. The SBA Area Office will notify the contracting officer, the protester, and the challenged concern of its decision by a verifiable means, which may include facsimile, electronic mail, or overnight delivery service.

(2) Award may be made to a protested concern after the SBA Area Office has determined that either the protested concern is an eligible small business or has dismissed all protests against it.

(3) If SBA's Office of Hearings and Appeals (OHA) subsequently overturns the Area Office's determination of eligibility or dismissal, and contract award has not been made, the contracting officer may apply the OHA decision to the procurement in question.

(g)(1) After receiving a protest involving an offeror being considered for award, the contracting officer shall not award the contract until the SBA has made a size determination or 15 business days have expired since SBA's receipt of a protest, whichever occurs first; however, award shall not be withheld when the contracting officer determines in writing that an award must be made to protect the public interest.

(2) If SBA has not made a determination within 15 business days, or within any extension of time granted by the contracting officer, the contracting officer may award the contract after determining in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will be disadvantageous to the Government.

(3) SBA may, at its sole discretion, reopen a formal size determination to correct an error or mistake, if it is within the appeal period and no appeal has been filed with OHA or, a final decision has not been rendered by the SBA Area Office or OHA.

(4) If a protest is received that challenges the small business status of an offeror not being considered for award, the contracting officer is not required to suspend contract action. The contracting officer shall forward the protest to the SBA (see paragraph (c)(1) of this section) with a notation that the concern is not being considered for award, and shall notify the protester of this action.

(h) An appeal from an SBA size determination may be filed by any concern or other interested party whose protest of the small business representation of another concern has been denied by an SBA Government Contracting Area Director, any concern or other interested party that has been adversely affected by an SBA Government Contracting Area Director's decision, or the SBA Associate Administrator for the SBA program involved. The appeal must be filed with the Office of Hearings and Appeals, Small Business Administration, Suite 5900, 409 3rd Street, SW., Washington, DC 20416, within the time limits and in strict accordance with the procedures contained in Subpart C of 13 CFR part 134. It is within the discretion of the SBA Judge whether to accept an appeal from a size determination. If a post-award appeal is submitted to OHA within the time limits specified in Subpart C of 13 CFR part 134, the contracting officer shall consider suspending contract performance until an SBA Judge decides the appeal. SBA will inform the contracting officer of its ruling on the appeal. SBA's decision, if received before award, will apply to the pending acquisition. If the contracting officer has made a written determination in accordance with (g)(1) or (2) of this section, the contract has been awarded, the SBA rulings is received after award, and OHA finds the protested concern to be ineligible for award, the contracting officer shall terminate the contract unless termination is not in the best interests of the Government, in keeping with the circumstances described in the written determination. However, the contracting officer shall not exercise any options or award further task or delivery orders.

(i) SBA will dismiss untimely protests. A protest that is not timely, even though received before award, shall be forwarded to the SBA Government Contracting Area Office (see paragraph (c)(1) of this section), with a notation on it that the protest is not timely. A protest received by a contracting officer after award of a contract shall be forwarded to the SBA Government Contracting Area Office with a notation that award has been made.

* * * * *

■ 8. Amend section 19.303 by revising the section heading and paragraphs (a) and (c) and adding paragraph (d) to read as follows:

19.303 Determining North American Industry Classification System codes and size standards.

(a)(1) The contracting officer shall determine the appropriate North American Industry Classification System (NAICS) code and related small business size standard and include them in solicitations above the micro-purchase threshold. For information on size standards matched to industry NAICS codes, including the use of new NAICS codes, see also 19.102(a).

(2) The contracting officer shall select the NAICS code which best describes the principal purpose of the product or service being acquired. Primary consideration is given to the industry descriptions in the U.S. NAICS Manual,

the product or service description in the solicitation and any attachments to it, the relative value and importance of the components of the procurement making up the end item being procured, and the function of the goods or services being purchased. A procurement is usually classified according to the component which accounts for the greatest percentage of contract value. A concern that submits an offer or quote for a contract where the NAICS code assigned to the contract is one for supplies, and furnishes a product it did not itself manufacture or produce, is categorized as a nonmanufacturer and deemed small if it meets the requirements of 19.102(f).

* * * * *

(c) The contracting officer's determination is final unless appealed as follows:

(1) An appeal from a contracting officer's NAICS code designation and the applicable size standard must be served and filed within 10 calendar days after the issuance of the initial solicitation or any amendment affecting the NAICS code or size standard. However, SBA may file a NAICS code appeal at any time before offers are due.

(2) Appeals from a contracting officer's NAICS code designation or applicable size standard may be filed with SBA's Office of Hearings and Appeals by—

(i) Any person adversely affected by a NAICS code designation or applicable size standard. However, with respect to a particular sole source 8(a) contract, only the SBA Associate Administrator for Business Development may appeal a NAICS code designation; or

(ii) The Associate or Assistant Director for the SBA program involved, through SBA's Office of General Counsel.

(3) Contracting officers shall advise the public, by amendment to the solicitation, of the existence of a NAICS code appeal (see 5.102(a)(1)). Such notices shall include the procedures and the deadline for interested parties to file and serve arguments concerning the appeal.

(4) SBA's Office of Hearings and Appeals (OHA) will dismiss summarily an untimely NAICS code appeal.

(5)(i) The appeal petition must be in writing and must be addressed to the Office of Hearings and Appeals, Small Business Administration, Suite 5900, 409 3rd Street SW., Washington, DC 20416.

(ii) There is no required format for the appeal; however, the appeal must include—

(A) The solicitation or contract number and the name, address, email address, and telephone number of the contracting officer;

(B) A full and specific statement as to why the NAICS code designation is allegedly erroneous and argument supporting the allegation; and

(C) The name, address, telephone number, and signature of the appellant or its attorney.

(6) The appellant must serve the appeal petition upon—

(i) The contracting officer who assigned the NAICS code to the acquisition; and

(ii) SBA's Office of General Counsel, Associate General Counsel for Procurement Law, 409 Third Street SW., Washington, DC 20416, facsimile 202–205–6873, or email at *OPLService@sba.gov.*

(7) Upon receipt of a NAICS code appeal, OHA will notify the contracting officer by a notice and order of the date OHA received the appeal, the docket number, and Judge assigned to the case. The contracting officer's response to the appeal, if any, must include argument and evidence (see 13 CFR Part 134), and must be received by OHA within 15 calendar days from the date of the docketing notice and order, unless otherwise specified by the Administrative Judge. Upon receipt of OHA's docketing notice and order, the contracting officer must withhold award, unless withholding award is not in the best interests of the Government, and immediately send to OHA an electronic link to or a paper copy of both the original solicitation and all amendments relating to the NAICS code appeal. The contracting officer will inform OHA of any amendments, actions, or developments concerning the procurement in question.

(8) After close of record, OHA will issue a decision and inform the contracting officer. If OHA's decision is received by the contracting officer before the date the offers are due, the decision shall be final and the solicitation must be amended to reflect the decision, if appropriate. OHA's decision received after the due date of the initial offers shall not apply to the pending solicitation but shall apply to future solicitations of the same products or services.

(d) SBA's regulations concerning appeals of NAICS code designations are found at 13 CFR 121.1101 to 121.1103 and 13 CFR part 134.

■ 9. Amend section 19.306 by revising paragraphs (b) through (m) to read as follows:

19.306 Protesting a firm's status as a HUBZone small business concern.

* * * * *

(b)(1) An offeror that is an interested party, the contracting officer, or the SBA may protest the apparently successful offeror's status as a qualified historically underutilized business zone (HUBZone) small business concern (see 13 CFR 126.800).

(2) SBA's protest regulations are found in subpart H ''Protests'' at 13 CFR 126.800 through 126.805.

(c) Protests relating to small business size status are subject to the procedures of 19.302. An interested party seeking to protest both the small business size and HUBZone status of an apparent successful offeror shall file two separate protests. Protests relating to small business size status for the acquisition and the HUBZone qualifying requirements will be processed concurrently by SBA.

(d) All protests must be in writing and must state all specific grounds for the protest.

(1) SBA will consider protests challenging the status of a concern if the protest presents evidence that—

(i) The concern is not a qualified HUBZone small business concern as described at 13 CFR 126.103 and 13 CFR 126.200;

(ii) The principal office is not located in a HUBZone; or

(iii) At least 35 percent of the employees do not reside in a HUBZone.

(2) Assertions that a protested concern is not a qualified HUBZone small business concern, without setting forth specific facts or allegations, will not be considered by SBA (see 13 CFR 126.801(b)).

(e) *Protest by an interested party.* (1) An interested party shall submit its protest to the contracting officer—

(i) For sealed bids—

(A) By the close of business on the fifth business day after bid opening; or

(B) By the close of business on the fifth business day from the date of identification of the apparent successful offeror, if the price evaluation preference was not applied at the time of bid opening; or

(ii) For negotiated acquisitions, by the close of business on the fifth business day after notification by the contracting officer of the apparently successful offeror.

(2) Any protest received after the designated time limits is untimely, unless it is from the contracting officer or SBA.

(f)(1) The contracting officer shall forward all protests to SBA. The protests are to be submitted to the Director, HUBZone Program, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416 or by fax to 202–

205–7167, Attn: HUBZone Small Business Status Protest.

(2) The protest shall include a referral letter written by the contracting officer with information pertaining to the solicitation. The referral letter must include the following information to allow SBA to determine timeliness and standing:

(i) The solicitation number (or an electronic link to or a paper copy of the solicitation).

(ii) The name, address, telephone number, fax number, and email address, of the contracting officer.

(iii) The type of HUBZone contract.

(iv) Whether the procurement was conducted using full and open competition with a HUBZone price evaluation preference, and whether the protester's opportunity for award was affected by the preference.

(v) If a HUBZone set-aside, whether the protester submitted an offer.

(vi) Whether the protested concern was the apparent successful offeror.

(vii) Whether the procurement was conducted using sealed bid or negotiated procedures.

(viii) The bid opening date, if applicable. If a price evaluation preference was applied after the bid opening date, also provide the date of identification of the apparent successful offeror.

(ix) The date the contracting officer received the protest.

(x) Whether a contract has been awarded.

(g) SBA will notify the protester and the contracting officer of the date SBA received the protest.

(h) *Before SBA decision.* (1) After receiving a protest involving the apparent successful offeror's status as a HUBZone small business concern, the contracting officer shall either—

(i) Withhold award of the contract until SBA determines the status of the protested concern; or

(ii) Award the contract after receipt of the protest but before SBA issues its decision if the contracting officer determines in writing that an award must be made to protect the public interest.

(2) SBA will determine the merits of the status protest within 15 business days after receipt of a protest, or within any extension of time granted by the contracting officer.

(3) If SBA does not issue its determination within 15 business days, or within any extension of time granted, the contracting officer may award the contract after determining in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will be disadvantageous to the Government. This determination shall be provided to the SBA's HUBZone Program Director.

(i) *After SBA decision.* The HUBZone Program Director will notify the contracting officer, the protester, and the protested concern of the SBA determination. The determination is effective immediately and is final unless overturned on appeal by SBA's Associate Administrator, Office of Government Contracting and Business Development (AA/GCBD).

(1) If the contracting officer has withheld contract award and SBA has determined that the protested concern is an eligible HUBZone or dismissed all protests against the protested concern, the contracting officer may award the contract to the protested concern. If AA/GCBD subsequently overturns the decision of the HUBZone Program Director, the contracting officer may apply the AA/GCBD decision to the procurement in question.

(2) If the contracting officer has withheld award and the HUBZone Program Director has determined that the protested concern is ineligible, and a timely AA/GCBD appeal has not been filed, then the contracting officer shall not award the contract to the protested concern.

(3) If the contracting officer has made a written determination in accordance with (h)(1)(ii) or (h)(3) of this section, awarded the contract, and the HUBZone Program Director's ruling sustaining the protest is received after award—

(i) The contracting officer shall terminate the contract, unless the contracting officer has made a written determination that termination is not in the best interests of the Government. However, the contracting officer shall not exercise any options or award further task or delivery orders under the contract;

(ii) The contracting officer shall update the Federal Procurement Data System to reflect the final decision of the HUBZone Program Director if no appeal is filed; and

(iii) The concern's designation as a certified HUBZone small business concern will be removed by SBA from the Dynamic Small Business Database. The concern shall not submit an offer as a HUBZone small business concern, until SBA issues a decision that the ineligibility is resolved.

(4) If the contracting officer has made a written determination in accordance with (h)(1)(ii) or (h)(3) of this section, awarded the contract, SBA has sustained the protest and determined that the concern is not a HUBZone small business, and a timely AA/GCBD appeal has been filed, then the contracting officer shall consider whether performance can be suspended until an AA/GCBD decision is rendered.

(5) If AA/GCBD affirms the decision of the HUBZone Program Director, finding the protested concern is ineligible, and contract award has occurred—

(i) The contracting officer shall terminate the contract, unless the contracting officer has made a written determination that termination is not in the best interest of the Government. However, the contracting officer shall not exercise any options or award further task or delivery orders.

(ii) The contracting officer shall update the FPDS to reflect the AA/GCBD decision; and

(iii) The SBA will remove the concern's designation as a certified HUBZone small business concern. The concern shall not submit an offer as a HUBZone small business concern until SBA issues a decision that the ineligibility is resolved or AA/GCBD finds the concern is eligible on appeal.

(6) A concern found to be ineligible during a HUBZone status protest is precluded from applying for HUBZone certification for 90 calendar days from the date of the SBA final decision.

(j) *Appeals of HUBZone status determinations.* The protested HUBZone small business concern, the protester, or the contracting officer may file appeals of protest determinations with SBA's AA/GC&BD. The AA/GC&BD must receive the appeal no later than 5 business days after the date of receipt of the protest determination. SBA will dismiss any untimely appeal.

(k) *The appeal must be in writing.* The appeal must identify the protest determination being appealed and must set forth a full and specific statement as to why the decision is erroneous or what significant fact the HUBZone Program Director failed to consider.

(l)(1) The party appealing the decision must provide notice of the appeal to—

(i) The contracting officer;

(ii) HUBZone Program Director, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416 or by fax to 202–205–7167; and

(iii) The protested HUBZone small business concern or the original protester, as appropriate.

(2) SBA will not consider additional information or changed circumstances that were not disclosed at the time of the Director/HUB's decision or that are based on disagreement with the findings and conclusions contained in the determination.

(m) The AA/GCBD will make its decision within 5 business days of the receipt of the appeal, if practicable, and

will base its decision only on the information and documentation in the protest record as supplemented by the appeal. SBA will provide a copy of the decision to the contracting officer, the protester, and the protested HUBZone small business concern. The SBA decision, if received before award, will apply to the pending acquisition. The AA/GCBD's decision is the final decision.

■ 10. Revise section 19.307 to read as follows:

19.307 Protecting a firm's status as a service-disabled veteran-owned small business concern.

(a) *Definition. Interested party,* as used in this section, has the meaning given in 13 CFR 125.8(b).

(b)(1) An offeror that is an interested party, the contracting officer, or the SBA may protest the apparently successful offeror's status as a service-disabled veteran-owned small business (SDVOSB) concern (see 13 CFR 125.24).

(2) SBA's protest regulations are found in subpart D ''Protests'' at 13 CFR 125.24 through 125.28.

(c) Protests relating to small business size status are subject to the procedures of 19.302. An interested party seeking to protest both the small business size and service-disabled veteran-owned small business status of an apparent successful offeror shall file two separate protests.

(d) All protests must be in writing and must state all specific grounds for the protest.

(1) SBA will consider protests challenging the service disabled veteran-owned status or the ownership and control of a concern if—

(i) For status protests, the protester presents evidence supporting the contention that the owner(s) cannot provide documentation from the Department of Veterans Affairs, Department of Defense determinations, or the U.S. National Archives and Records Administration to show that they meet the definition of ''service-disabled veteran'' or ''service disabled veteran with a permanent and severe disability'' as set forth in 13 CFR 125.8; or

(ii) For ownership and control protests, the protester presents evidence that the concern is not 51 percent owned and controlled by one or more service-disabled veterans. In the case of a veteran with a permanent and severe disability, the protester presents evidence that the concern is not controlled by the veteran, spouse, or permanent caregiver of such veteran.

(2) Assertions that a protested concern is not a service-disabled veteran-owned small business concern, without setting forth specific facts or allegations, will not be considered by SBA (see 13 CFR 125.25(b)).

(e) *Protest by an interested party.* (1) An offeror shall submit its protest to the contracting officer—

(i) To be received by close of business on the fifth business day after bid opening (in sealed bid acquisitions); or

(ii) To be received by close of business on the fifth business day after notification by the contracting officer of the apparently successful offeror for negotiated acquisitions).

(2) Any protest received after the designated time limits is untimely, unless it is from the contracting officer or SBA.

(f)(1) The contracting officer shall forward all protests to SBA. The protests are to be submitted to SBA's Director, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416 or by fax to 202–205–6390, Attn: Service-Disabled Veteran Status Protest.

(2) The protest shall include a referral letter written by the contracting officer with information pertaining to the solicitation. The referral letter must include the following information to allow SBA to determine timeliness and standing:

(i) The solicitation number (or an electronic link to or a paper copy of the solicitation).

(ii) The name, address, telephone number, fax number, and email address of the contracting officer.

(iii) Whether the contract was sole-source or set-aside.

(iv) Whether the protestor submitted an offer.

(v) Whether the protested concern was the apparent successful offeror.

(vi) When the protested concern submitted its offer.

(vii) Whether the acquisition was conducted using sealed bid or negotiated procedures.

(viii) The bid opening date, if applicable.

(ix) The date the contracting officer received the protest.

(x) The date the protestor received notification about the apparent successful offeror, if applicable.

(xi) Whether a contract has been awarded.

(g) SBA will notify the protester and the contracting officer of the date SBA received the protest.

(h) *Before SBA decision.* (1) After receiving a protest involving the apparent successful offeror's status as a service-disabled veteran-owned small business concern, the contracting officer shall either—

(i) Withhold award of the contract until SBA determines the status of the protested concern; or

(ii) Award the contract after receipt of the protest but before SBA issues its decision if the contracting officer determines in writing that an award must be made to protect the public interest.

(2) SBA will determine the merits of the status protest within 15 business days after receipt of a protest, or within any extension of time granted by the contracting officer.

(3) If SBA does not issue its determination within 15 business days, or within any extension of time that is granted, the contracting officer may award the contract after determining in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will be disadvantageous to the government. This determination shall be provided to the SBA's Director, Office of Government Contracting and a copy shall be included in the contract file.

(i) *After SBA decision.* SBA will notify the contracting officer, the protester, and the protested concern of its determination. The determination is effective immediately and is final unless overturned on appeal by SBA's Office of Hearings and Appeals (OHA) pursuant to 13 CFR part 134.

(1) If the contracting officer has withheld contract award and SBA has determined that the protested concern is an eligible SDVOSB or dismissed all protests against the protested concern, the contracting officer may award the contract to the protested concern. If OHA subsequently overturns the SBA Director for Government Contracting's determination or dismissal, the contracting officer may apply the OHA decision to the procurement in question.

(2) If the contracting officer has withheld contract award, SBA has sustained the protest and determined that the concern is not an SDVOSB, and no OHA appeal has been filed, then the contracting officer shall not award the contract to the protested concern.

(3) If the contracting officer has made a written determination in accordance with (h)(1)(ii) or (h)(3) of this section, the contract has been awarded, and SBA's ruling sustaining the protest is received after award—

(i) The contracting officer shall terminate the contract, unless the contracting officer has made a written determination that termination is not in the best interests of the Government. However, the contracting officer shall not exercise any options or award further task or delivery orders;

(ii) The contracting officer shall update the FPDS to reflect the final SBA decision; and

(iii) The concern must remove its designation in the System for Award Management (SAM) as a SDVOSB concern, and shall not submit an offer as a SDVOSB concern, until SBA issues a decision that the ineligibility is resolved.

(4) If the contracting officer has made a written determination in accordance with (h)(1)(ii) or (h)(3) of this section and awarded the contract to the protested firm, SBA has sustained the protest and determined that the concern is not a SDVOSB, and a timely OHA appeal has been filed, then the contracting officer shall consider whether performance can be suspended until an OHA decision is rendered.

(5) If OHA affirms the SBA Director for Government Contracting's determination finding the protested concern is ineligible—

(i) The contracting officer shall terminate the contract unless the contracting officer has made a written determination that it is not in the best interest of the Government. However, the contracting officer shall not exercise any options or award further task or delivery orders;

(ii) The contracting officer shall update the FPDS to reflect OHA's decision; and

(iii) The concern shall remove its designation in SAM as a SDVOSB concern, until SBA issues a decision that the ineligibility is resolved or OHA finds the concern is eligible on appeal.

(6) A concern found to be ineligible may not submit future offers as an SDVOSB concern until the concern demonstrates to SBA's satisfaction that it has overcome the reason for the protest and SBA issues a decision to this effect.

(j) *Appeals of SDVOSB status determinations.* The protested SDVOSB small business concern, the protester, or the contracting officer may file appeals of protest determinations to OHA. OHA must receive the appeal no later than 10 business days after the date of receipt of the protest determination. SBA will dismiss an untimely appeal. See Subpart E ''Rules of Practice for Appeals From Service-Disabled Veteran Owned Small Business Concerns Protests'' at 13 CFR 134.501 through 134.515 for SBA's appeals regulations.

(k) *The appeal must be in writing.* The appeal must identify the protest determination being appealed and must set forth a full and specific statement as to why the SDVOSB protest determination is alleged to be based on a clear error of fact or law, together with an argument supporting such allegation.

(l) The party appealing the decision must provide notice of the appeal to—

(1) The contracting officer;

(2) Director, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416, facsimile 202–205–6390;

(3) The protested SDVOSB concern or the original protester, as appropriate; and

(4) Associate General Counsel for Procurement Law, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416, facsimile 202–205–6873, or email at *OPLService@sba.gov.*

(m) OHA will make its decision within 15 business days of the receipt of the appeal, if practicable. SBA will provide a copy of the decision to the contracting officer, the protester, and the protested SDVOSB small business concern. The OHA decision regarding the status of the concern is final and is binding on the parties.

■ 11. Revise section 19.308 to read as follows:

19.308 Protesting a firm's status as an economically disadvantaged women-owned small business concern or women-owned small business concern eligible under the WOSB Program.

(a) *Definition. Interested party,* as used in this section, has the meaning given in 13 CFR 127.102.

(b)(1) An offeror that is an interested party, the contracting officer, or the SBA may protest the apparent successful offeror's status as an economically disadvantaged women-owned small business (EDWOSB) concern or women-owned small business (WOSB) concern eligible under the WOSB Program.

(2) SBA's protest regulations are found in subpart F ''Protests'' at 13 CFR 127.600 through 127.605.

(c) Protests relating to small business size status are subject to the procedures of 19.302. An interested party seeking to protest both the small business size and WOSB or EDWOSB status of an apparent successful offeror shall file two separate protests.

(d) All protests shall be in writing and must state all specific grounds for the protest.

(1) SBA will consider protests challenging the status of a concern if—

(i) The protest presents evidence that the concern is not at least 51 percent owned and controlled by one or more women who are United States citizens; or

(ii) The protest presents evidence that the concern is not at least 51 percent owned and controlled by one or more economically disadvantaged women, when it is in connection with an EDWOSB contract.

(2) SBA shall consider protests by a contracting officer when the apparent successful offeror has failed to provide all of the required documents, as set forth in 19.1503(c).

(3) Assertions that a protested concern is not a EDWOSB or WOSB concern eligible under the WOSB Program, without setting forth specific facts or allegations, will not be considered by SBA (see 13 CFR 127.603(a)).

(e) *Protest by an interested party.* (1) An offeror shall submit its protest to the contracting officer—

(i) To be received by the close of business by the fifth business day after bid opening (in sealed bid acquisitions); or

(ii) To be received by the close of business by the fifth business day after notification by the contracting officer of the apparent successful offeror (in negotiated acquisitions).

(2) Any protest received after the designated time limit is untimely, unless it is from the contracting officer or SBA.

(f)(1) The contracting officer shall forward all protests to SBA. The protests are to be submitted to SBA's Director for Government Contracting, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416 or by fax to 202–205–6390, Attn: Women-owned Small Business Status Protest.

(2) The protest shall include a referral letter written by the contracting officer with information pertaining to the solicitation. The referral letter must include the following information to allow SBA to determine timeliness and standing:

(i) The solicitation number or electronic link to or a paper copy of the solicitation.

(ii) The name, address, telephone number, email address, and facsimile number of the contracting officer.

(iii) Whether the protestor submitted an offer.

(iv) Whether the protested concern was the apparent successful offeror.

(v) When the protested concern submitted its offer.

(vi) Whether the acquisition was conducted using sealed bid or negotiated procedures.

(vii) The bid opening date, if applicable.

(viii) The date the contracting officer received the protest.

(ix) The date the protestor received notification about the apparent successful offeror, if applicable.

(x) Whether a contract has been awarded.

(g) SBA will notify the protester and the contracting officer of the date SBA received the protest.

(h) *Before SBA decision.* (1) After receiving a protest involving the apparent successful offeror's status as an EDWOSB or WOSB concern eligible under the WOSB Program, the contracting officer shall either—

(i) Withhold award of the contract until SBA determines the status of the protested concern; or

(ii) Award the contract after receipt of the protest but before SBA issues its decision if the contracting officer determines in writing that an award must be made to protect the public interest.

(2) SBA will determine the merits of the status protest within 15 business days after receipt of a protest, or within any extension of that time granted by the contracting officer.

(3) If SBA does not issue its determination within 15 business days, or within any extension of time granted, the contracting officer may award the contract after determining in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will be disadvantageous to the Government. This determination shall be provided to the SBA Director for Government Contracting and a copy shall be included in the contract file.

(i) *After SBA decision.* SBA will notify the contracting officer, the protester, and the protested concern of its determination. The determination is effective immediately and is final unless overturned on appeal by SBA's Office of Hearings and Appeals (OHA) pursuant to 13 CFR part 134.

(1) If the contracting officer has withheld contract award and SBA has denied or dismissed the protest, the contracting officer may award the contract to the protested concern. If OHA subsequently overturns the SBA Director for Government Contracting's determination or dismissal, the contracting officer may apply the OHA decision to the procurement in question.

(2) If the contracting officer has withheld contract award, SBA has sustained the protest and determined that the concern is not eligible under the WOSB Program, and no OHA appeal has been filed, then the contracting officer shall not award the contract to the protested concern.

(3) If the contracting officer has made a written determination in accordance with (h)(1)(ii) or (h)(3) of this section, awarded the contract, and SBA's ruling is received after award, and no OHA appeal has been filed, then—

(i) The contracting officer shall terminate the contract, unless the contracting officer has made a written determination that termination is not in the best interests of the Government. However, the contracting officer shall not exercise any options or award further task or delivery orders;

(ii) The contracting officer shall update the FPDS to reflect the final SBA decision; and

(iii) The concern must remove its designation in the System for Award Management (SAM) as an EDWOSB or WOSB concern eligible under the WOSB Program, and shall not submit an offer as an EDWOSB concern or WOSB concern eligible under the WOSB Program, until SBA issues a decision that the ineligibility is resolved.

(4) If the contracting officer has made a written determination in accordance with (h)(1)(ii) or (h)(3) of this section, contract award has occurred, SBA has sustained the protest and determined that the concern is not eligible under the WOSB Program, and a timely OHA appeal has been filed, then the contracting officer shall consider whether performance can be suspended until an OHA decision is rendered.

(5) If OHA affirms the SBA Director for Government Contracting's determination finding the protested concern is ineligible, then—

(i) The contracting officer shall terminate the contract, unless the contracting officer has made a written determination that termination is not in the best interests of the Government. However, the contracting officer shall not exercise any options or award further task or delivery orders;

(ii) The contracting officer shall update the FPDS to reflect OHA's decision; and

(iii) The concern must remove its designation in SAM as an EDWOSB or WOSB concern eligible under the WOSB Program, and shall not submit an offer as an EDWOSB concern or WOSB concern eligible under the WOSB Program, until SBA issues a decision that the ineligibility is resolved or OHA finds the concern is eligible on appeal.

(j) *Appeals of EDWOSB or WOSB concerns eligible under the WOSB Program status determinations.* (1) The protested EDWOSB concern or WOSB concern eligible under the WOSB program, the protester, or the contracting officer may file an appeal of a WOSB or EDWOSB status protest determination with OHA.

(2) OHA must receive the appeal no later than 10 business days after the date of receipt of the protest determination. SBA will dismiss an untimely appeal.

(3) See subpart G ''Rules of Practice for Appeals From Women-Owned Small Business Concerns (WOSB) and Economically Disadvantaged WOSB Concern (EDWOSB) Protests'' at 13 CFR 134.701 through 134.715 for SBA's appeals regulations.

(k) *The appeal must be in writing.* The appeal must identify the protest determination being appealed and must set forth a full and specific statement as to why the EDWOSB concern or WOSB concern eligible under the WOSB program protest determination is alleged to be based on a clear error of fact or law, together with an argument supporting such allegation.

(l) The party appealing the decision must provide notice of the appeal to—

(1) The contracting officer;

(2) Director, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416, facsimile 202–205–6390;

(3) The protested EDWOSB concern or WOSB concern eligible under the WOSB program, or the original protester, as appropriate; and

(4) SBA's Office of General Counsel, Associate General Counsel for Procurement Law, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416, facsimile 202–205–6873, or email at *OPLService@sba.gov*.

(m) OHA will make its decision within 15 business days of the receipt of the appeal, if practicable. SBA will provide a copy of the decision to the contracting officer, the protester, and the protested EDWOSB concern or WOSB concern eligible under the WOSB program. The OHA decision is the final agency decision and is binding on the parties.

19.402 [Amended]

■ 12. Amend section 19.402 by removing from paragraph (c)(1)(ii) ''Woman-Owned'' and adding ''Women-Owned'' in its place.

19.703 [Amended]

■ 13. Amend section 19.703 by—

■ a. Removing from the introductory text of paragraph (a) ''of this section'' and ''woman-owned'' and adding ''of this section,'' and ''women-owned'' in its place, respectively;

■ b. Removing from paragraph (a)(1) ''woman-owned'' and adding ''women-owned'' in its place; and

■ c. Removing from paragraph (b) ''woman-owned'' and adding ''women-owned'' in its place.

[FR Doc. 2014–17499 Filed 7–24–14; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2005–76; FAR Case 2013–017; Item III; Docket 2013–0017, Sequence 1]

RIN 9000–AM64

Federal Acquisition Regulation; Allowability of Legal Costs for Whistleblower Proceedings

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, with changes, an interim rule amending the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 that addresses the allowability of legal costs incurred by a contractor or subcontractor related to a whistleblower proceeding commenced by the submission of a complaint of reprisal by the contractor or subcontractor employee.

DATES: *Effective:* July 25, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Edward N. Chambers, Procurement Analyst, at 202–501–3221 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–76, FAR Case 2013–017.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 78 FR 60173 on September 30, 2013, to implement sections 827(g) and 828(d) of the National Defense Authorization Act (NDAA) FY 2013 (Pub. L. 112–239). Section 827(g) amends 10 U.S.C. 2324(k), Allowable costs under defense contracts, and section 828(d) similarly amends 41 U.S.C. 4310, Proceeding costs not allowable, to address the allowability of legal costs incurred by a contractor or subcontractor in connection with a whistleblower proceeding commenced by a contractor or subcontractor employee submitting a complaint of reprisal under the applicable whistleblower section (10 U.S.C. 2409, Contractor employees: Protection from reprisal for disclosure of certain information, or 41 U.S.C. 4712, Pilot program for enhancement of contractor [employee] protection from reprisal for disclosure of certain information, respectively).

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

In response to a public comment, the final rule has been modified to expressly include whistleblower complaints in the provisions at FAR 31.205–47(c).

B. Analysis of Public Comments

One respondent submitted comments on the interim rule.

1. Allowability of Costs Prior to Completion of Litigation

Comment: The respondent commented that the revised regulation can be read and understood to allow an agency to declare all costs associated with responding to a whistleblower complaint of reprisal as presumptively unallowable until the matter is completely litigated and the contractor prevails, at which point the contractor's recovery of the reasonable net costs are limited by the not-to-exceed-80 percent rule. According to the respondent, this effectively forces the contractor to finance the defense of such claims, even if the cost of settlement could be less than the cost of defense.

Response: This interim rule has directly implemented the statutory requirement. The costs incurred in connection with any proceeding brought by a contractor or subcontractor employee submitting a whistleblower complaint of reprisal in accordance with 41 U.S.C. 4712 or 10 U.S.C. 2409 are treated exactly the same as the pre-existing cost principle treats costs incurred in connection with any proceeding brought by a Federal, State, local, or foreign government for violation of, or a failure to comply with, law or regulation by the contractor (including its agents or employees), or costs incurred in connection with any proceeding brought by a third party in the name of the United States under the False Claims Act, 31 U.S.C. 3730.

Any proceedings costs which are incurred in connection with any proceeding under FAR 31.205–47(b), and which are not made unallowable by that paragraph, are subject to the allowability rules of FAR 31.205–47(c), (d), and (e). The not-to-exceed-80 percent rule in the provisions of FAR 31.205–47(e)(3), which addresses the allowability of reasonable net costs incurred in connection with proceedings described in paragraph (b), applies equally to all proceedings addressed in paragraph (b), including those proceedings for whistleblower complaints of reprisal added by 41 U.S.C. 4712 or 10 U.S.C. 2409.

Comment: The respondent considered that the interim rule effectively prohibits settlement of whistleblower claims by making related legal costs entirely unallowable if the proceeding ''could have led'' to an agency order for corrective action, with no apparent exceptions.

The respondent noted the statement in the Initial Regulatory Flexibility Analysis that this rule ''would only affect a contractor if a contractor employee commenced a proceeding by submitting a complaint under 10 U.S.C. 2409, and if that proceeding resulted in imposition of a monetary penalty or an order to take corrective action.'' The respondent did not reach a similar conclusion, because the rule also affects a contractor who settles a whistleblower case that ''could have led'' to imposition of a monetary penalty or an order to take corrective action. The respondent requested that language be added at FAR 31.205–47(c), to provide the same treatment for whistleblower complaints as is currently provided for settlement of any proceeding brought by a third party under the False Claims Act in which the United States did not intervene.

Response: The Councils have incorporated the requested change in the final rule. The FAR includes paragraph (c) to provide interpretation of the cost principle when the matter is resolved through consent or compromise. Now that whistleblower proceedings have been included in paragraph (b), it is reasonable that they should be covered in paragraph (c) as well.

The Final Regulatory Flexibility Analysis has also been reworded to address potential impact if the proceedings result in the consequences covered by paragraphs 31.105–47(b)(3) through (b)(5).

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This action implements sections 827(g) and 828(d) of the National Defense Authorization Act for FY 2013. The objective of this rule is to address the allowability of legal costs incurred by a contractor in connection with a proceeding commenced by an employee submitting a complaint under 10 U.S.C. 2409 or 41 U.S.C. 4712. The statutory authority is 10 U.S.C. 2324(k) and 41 U.S.C. 4310.

There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis.

Most contracts awarded on a fixed-price competitive basis do not require application of the cost principles. Most contracts valued at or below the simplified acquisition threshold are awarded on a fixed price competitive basis. Requiring submission of certified cost or pricing data for acquisitions that do not exceed the simplified acquisition threshold is prohibited (FAR 15.403–4(a)(2)). According to Federal Procurement Data System (FPDS) data for FY 2012, there were 73,014 Federal new contract awards over the simplified acquisition threshold in FY 2012. Of those contracts, only 11,279 awards were to small businesses on other than a competitive fixed-price basis. Within that number of awards, this rule would only affect a contractor if a contractor employee commenced a proceeding by submitting a complaint under 10 U.S.C. 2409 or 41 U.S.C. 4712, and if that proceeding resulted in any of the consequences listed at FAR 31.205–47(b). DoD, GSA, and NASA do not have data on the percentage of contracts that involve submission of a whistleblower complaint and result in monetary penalty or an order to take corrective action. There are no reporting, recordkeeping, or other compliance requirements in this rule.

DoD, GSA, and NASA were unable to identify any alternatives to the rule which would reduce the impact on small entities and still meet the requirements of the statute.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: July 18, 2014.

William Clark,

Acting Director, Office of Government-Wide Acquisition Policy, Office of Acquisition Policy, Office of Government-Wide Policy.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR part 31, which was published in the **Federal Register** at 78 FR 60173, September 30, 2013, is adopted as final with the following changes:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 1. The authority citation for 48 CFR part 31 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 2. Amend section 31.205–47 by—

■ a. Redesignating paragraph (c)(2) as paragraph (c)(2)(i);

■ b. Removing from the newly redesignated paragraph (c)(2)(i) ''proceeding,'' and ''States,'' and adding ''proceeding'' and ''States'' in their places, respectively; and

■ c. Adding paragraph (c)(2)(ii) to read as follows:

31.205–47 Costs related to legal and other proceedings.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(ii) In the event of disposition by consent or compromise of a proceeding brought by a whistleblower for alleged reprisal in accordance with 41 U.S.C. 4712 or 10 U.S.C. 2409, reasonable costs incurred by a contractor or subcontractor in connection with such a proceeding that are not otherwise unallowable by regulation or by agreement with the United States may be allowed if the contracting officer, in consultation with his or her legal advisor, determined that there was very little likelihood that the claimant would have been successful on the merits.

* * * * *

[FR Doc. 2014–17500 Filed 7–24–14; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4 and 32

[FAC 2005–76; Item IV; Docket No. 2014–0053; Sequence No. 2]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to make editorial changes.

DATES: *Effective:* July 25, 2014.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat Division (MVCB), 1800 F Street NW., 2nd Floor, Washington, DC 20405, 202–501–4755, for information pertaining to status or publication schedules. Please cite FAC 2005–76, Technical Amendments.

SUPPLEMENTARY INFORMATION: In order to update certain elements in 48 CFR parts 4 and 32 this document makes editorial changes to the FAR.

List of Subject in 48 CFR parts 4 and 32

Government procurement.

Dated: July 18, 2014.

William Clark,

Acting Director, Office of Government-Wide Acquisition Policy, Office of Acquisition Policy, Office of Government-Wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 4 and 32 as set forth below:

■ 1. The authority citation for 48 CFR parts 4 and 32 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 4—ADMINISTRATIVE MATTERS

4.605 [Amended]

■ 2. Amend section 4.605 by removing from paragraph (c)(2) introductory text ''Integrated Acquisition Environment'' and adding ''Integrated Award Environment'' in its place.

4.1601 [Amended]

■ 3. Amend section 4.1601 by removing from paragraph (b) ''Integrated

Acquisition Environment'' and adding ''Integrated Award Environment'' in its place.

PART 32—CONTRACT FINANCING

32.009–1 [Amended]

■ 4. Amend section 32.009–1 by removing ''OMB Memorandum M–13–15,'' and adding ''OMB Memoranda M–13–15 and M–14–10, both titled'' in its place.

[FR Doc. 2014–17501 Filed 7–24–14; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2014–0052, Sequence No. 4]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–76; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2005–76, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–76, which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov.*

DATES: July 25, 2014.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005–76 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

Rules Listed in FAC 2005–76

Item	Subject	FAR case	Analyst
*I	Equal Employment and Affirmative Action for Veterans and Individuals with Disabilities (Interim).	2014–013	Loeb.
*II	Small Business Protests and Appeals	2012–014	Morgan.
*III	Allowability of Legal Costs for Whistleblower Proceedings	2013–017	Chambers.
IV	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–76 amends the FAR as specified below:

Item I—Equal Employment and Affirmative Action for Veterans and Individuals With Disabilities (FAR Case 2014–013)

DoD, GSA, and NASA are issuing an interim rule amending the FAR to implement final rules issued on September 24, 2013, by the Office of Federal Contract Compliance Programs at the Department of Labor (DOL) relating to equal opportunity and affirmative action for veterans and individuals with disabilities. The DOL rules provide clarification of mandatory listing of employment openings, the posting of notices, making notices accessible to persons with disabilities, and requiring nondiscrimination statements in contractor solicitations or advertisements for employees. The FAR clauses have been restructured to provide a citation to the applicable clause in the DOL regulations and include a statement that summarizes the contractors' top level obligations under each clause. There is no significant impact on small entities imposed by the FAR rules.

Item II—Small Business Protests and Appeals (FAR Case 2012–014)

This final rule amends the FAR to provide revised regulatory coverage for small business size and small business status protest and appeal procedures and to ensure that the FAR contains consistent and coherent protest and appeal procedures that are congruent with Small Business Administration regulations.

This final rule will have no direct negative impact on any small business concern, since it is aimed at preventing other than small business concerns from receiving or performing contracts set aside for small business concerns. This rule will indirectly benefit small business concerns by preventing awards to ineligible concerns, or shortening the length of time other than small business concerns perform small business set-aside contracts.

Item III—Allowability of Legal Costs for Whistleblower Proceedings (FAR Case 2013–017)

This finalizes an interim rule that revised the cost principle at FAR 31.205–47 to implement sections 827(g) and 828(d) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239). The cost principle addresses the allowability of legal costs incurred by a contractor or subcontractor in connection with a whistleblower protection proceeding commenced by a contractor or subcontractor employee submitting a complaint of reprisal under the applicable whistleblower statute. The cost principle is revised in the final rule to allow reasonable legal proceeding costs in certain settlements. Because most contracts awarded to small businesses are awarded on a competitive, fixed-price basis, thus limiting their exposure to the cost principles, the impact of this interim rule on small businesses will be minimal.

Item IV—Technical Amendments

Editorial changes are made at FAR 4.605, 4.1601, and 32.009–1. The change at 32.009–1 shows the recent extension

of the policy to provide accelerated payment to small business subcontractors.

Dated: July 18, 2014.

William Clark,

Acting Director, Office of Government-Wide Acquisition Policy, Office of Acquisition Policy, Office of Government-Wide Policy.

[FR Doc. 2014–17502 Filed 7–24–14; 8:45 am]

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