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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1090

[Docket No. CFPB–2014–0003]

RIN 3170–AA25

Defining Larger Participants of the International Money Transfer Market

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau or CFPB) amends the regulation defining larger participants of certain consumer financial product and service markets by adding a new section to define larger participants of a market for international money transfers. The Bureau is issuing this final rule pursuant to its authority, under the Dodd-Frank Wall Street Reform and Consumer Protection Act, to supervise certain nonbank covered persons for compliance with Federal consumer financial law and for other purposes. The Bureau has the authority to supervise nonbank covered persons of all sizes in the residential mortgage, private education lending, and payday lending markets. In addition, the Bureau has the authority to supervise nonbank ''larger participant[s]'' of markets for other consumer financial products or services, as the Bureau defines by rule. The Bureau has issued rules defining larger participants of markets for consumer reporting, consumer debt collection, and student loan servicing. This final rule identifies a market for international money transfers and defines ''larger participants'' of this market that are subject to the Bureau's supervisory authority.

DATES: Effective December 1, 2014.

FOR FURTHER INFORMATION CONTACT: Edna Boateng, Senior Consumer Financial Protection Analyst, Office of Supervision Policy, (202) 435–7697, Amanda Quester, Senior Counsel, Office of Regulations, (202) 365–0702, or Brian Shearer, Attorney, Office of Supervision Policy, (202) 435–7794.

SUPPLEMENTARY INFORMATION: On January 31, 2014, the Bureau published a notice of proposed rulemaking proposing to define larger participants of a market for international money transfers.[1] The Bureau is issuing this final rule to define larger participants of the identified market (Final Rule).

I. Overview

Section 1024 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), codified at 12 U.S.C. 5514,[2] gives the Bureau supervisory authority over all nonbank covered persons [3] offering or providing three enumerated types of consumer financial products or services: (1) Origination, brokerage, or servicing of consumer loans secured by real estate, and related mortgage loan modification or foreclosure relief services; (2) private education loans; and (3) payday loans.[4] The Bureau also has supervisory authority over ''larger participant[s] of a market for other consumer financial products or services,'' as the Bureau defines by rule.[5]

The Bureau is authorized to supervise nonbank covered persons subject to 12 U.S.C. 5514 for purposes of: (1) Assessing compliance with Federal consumer financial law; (2) obtaining information about such persons' activities and compliance systems or procedures; and (3) detecting and assessing risks to consumers and consumer financial markets.[6] The Bureau conducts examinations, of various scopes, of supervised entities. In addition, the Bureau may, as appropriate, request information from supervised entities without conducting examinations.[7]

The Bureau prioritizes supervisory activity among nonbank covered persons on the basis of risk, taking into account, among other factors, the size of each entity, the volume of its transactions involving consumer financial products or services, the size and risk presented by the market in which it is a participant, the extent of relevant State oversight, and any field and market information that the Bureau has on the entity. Such field and market information might include, for example, information from consumer complaints and any other information the Bureau has about risks to consumers.

The specifics of how an examination takes place vary by market and entity. However, the examination process generally proceeds as follows. Bureau examiners contact the entity for an initial conference with management and often request records and other information. Bureau examiners will ordinarily also review the components of the supervised entity's compliance management system. Based on these discussions and a preliminary review of the information received, examiners determine the scope of an on-site examination and then coordinate with

[1] 79 FR 5302 (Jan. 31, 2014).

[2] Public Law 111–203, section 1024, 124 Stat. 1376, 1987 (2010) (codified at 12 U.S.C. 5514).

[3] The provisions of 12 U.S.C. 5514 apply to certain categories of covered persons, described in subsection (a)(1), and expressly exclude from coverage persons described in 12 U.S.C. 5515(a) or 5516(a). ''Covered persons'' include ''(A) any person that engages in offering or providing a consumer financial product or service; and (B) any affiliate of a person described [in (A)] if such affiliate acts as a service provider to such person.'' 12 U.S.C. 5481(6).

[4] 12 U.S.C. 5514(a)(1)(A), (D), (E). The Bureau also has the authority to supervise any nonbank covered person that it ''has reasonable cause to determine, by order, after notice to the covered person and a reasonable opportunity . . . to respond . . . is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.'' 12 U.S.C. 5514(a)(1)(C); *see also* 12 CFR part 1091 (prescribing procedures for making determinations under 12 U.S.C. 5514(a)(1)(C)). In addition, the Bureau has supervisory authority over very large depository institutions and credit unions and their affiliates. 12 U.S.C. 5515(a). Furthermore, the Bureau has certain authorities relating to the supervision of other depository institutions and credit unions. 12 U.S.C. 5516(c)(1), (e). One of the Bureau's mandates under the Dodd-Frank Act is to ensure that ''Federal consumer financial law is enforced consistently without regard to the status of a person as a depository institution, in order to promote fair competition.'' 12 U.S.C. 5511(b)(4).

[5] 12 U.S.C. 5514(a)(1)(B), (a)(2) *see also* 12 U.S.C. 5481(5) (defining ''consumer financial product or service''). The Final Rule describes one market for consumer financial products or services, which the rule labels ''international money transfers.'' The definition does not encompass all activities that could be considered international money transfers. Any reference herein to ''the international money transfer market'' means only the particular market for international money transfers identified by the Final Rule.

[6] 12 U.S.C. 5514(b)(1).

[7] *See* 12 U.S.C. 5514(b) (authorizing the Bureau both to conduct examinations and to require reports from entities subject to supervision).

the entity to initiate the on-site portion of the examination. While on-site, examiners spend a period of time holding discussions with management about the entity's policies, processes, and procedures; reviewing documents and records; testing transactions and accounts for compliance; and evaluating the entity's compliance management system. Examinations may involve issuing confidential examination reports, supervisory letters, and compliance ratings. In addition to the process described above, the Bureau may also conduct off-site examinations.

The Bureau has published a general examination manual describing the Bureau's supervisory approach and procedures.[8] As explained in the manual, the Bureau will structure examinations to address various factors related to a supervised entity's compliance with Federal consumer financial law and other relevant considerations. On October 22, 2013, the Bureau released procedures specific to remittance transfers for use in the Bureau's examinations of entities within its supervisory authority.[9] The Bureau plans to use those examination procedures (or an updated version, as appropriate) in supervising international money transfers. The procedures include instructions on examining for compliance with, among other laws and regulations, new requirements in subpart B of Regulation E relating to remittance transfers (Remittance Rule), which went into effect on October 28, 2013.[10]

The States have been active in regulation of money transmission, with forty-seven States and the District of Columbia requiring entities to obtain a license to engage in money transmission, as defined by applicable law. Many States actively examine money transmitters, and State money transmitter regulator associations have indicated that the State regulators look forward to collaborating with the Bureau in supervising international money transfer providers.[11] In response to the proposal, industry commenters also emphasized the need to coordinate with the States in this market. The Bureau agrees that this collaboration is important and will coordinate with appropriate State regulatory authorities in examining larger participants of the international money transfer market.

This Final Rule establishes a category of nonbank covered persons that is subject to the Bureau's supervisory authority under 12 U.S.C. 5514 by defining ''larger participants'' of a market for international money transfers.[12] The Final Rule pertains only to that purpose and does not impose new substantive consumer protection requirements.[13] Nonbank covered persons generally are subject to the Bureau's regulatory and enforcement authority and any applicable Federal consumer financial law, regardless of whether they are subject to the Bureau's supervisory authority.

II. Background

On January 31, 2014, the Bureau published a notice of proposed rulemaking proposing to define larger participants of a market for international money transfers (Proposed Rule).[14] The Bureau requested public comment on the Proposed Rule. The Bureau received 16 comments from consumer advocates, industry participants, trade associations, State regulator associations, and individual consumers. The comments are discussed in more detail below.

The Proposed Rule included a test to assess whether a nonbank covered person is a larger participant of the international money transfer market. Under the proposed test, a nonbank covered person with at least one million aggregate annual international money transfers, as described in the Proposed Rule, would be a larger participant of the international money transfer market.

III. Summary of the Final Rule

The Bureau's existing larger-participant rule, 12 CFR part 1090, prescribes various procedures, definitions, standards, and protocols that apply with respect to all markets in which the Bureau has defined larger participants.[15] Those generally applicable provisions, which are codified in subpart A, also are applicable for the international money transfer market described by this Final Rule. The definitions in § 1090.101 should be used, unless otherwise specified, when interpreting terms in this Final Rule.

The Bureau includes relevant market descriptions and larger-participant tests, as it develops them, in subpart B.[16] Accordingly, the Final Rule defining larger participants of the international money transfer market amends Part 1090 by adding § 1090.107 in subpart B.

The Bureau is finalizing the Proposed Rule largely as proposed. The Final Rule defines an international money transfer market that covers certain electronic transfers of funds sent by nonbanks that are international money transfer providers. To be included in this market, transfers must be requested by a sender in a State to be sent to a designated recipient in a foreign country. The Final Rule's definitions are modeled in part on the definitions of ''remittance transfer'' and related terms in the Electronic Fund Transfer Act (EFTA) and its implementing regulation, Regulation E, but are not co-extensive with those definitions.[17] For example, transfers of $15 or less can be ''international money transfers'' but not

[8] CFPB Supervision and Examination Manual (Oct. 1, 2012), *available at http://www.consumerfinance.gov/guidance/supervision/manual/*.

[9] CFPB Supervision and Examination Manual, Remittance Transfer Examination Procedures (Oct. 22, 2013), *available at http://www.consumerfinance.gov/guidance/supervision/manual/*. In a joint comment, several large money transmitters encouraged the Bureau to provide additional guidance regarding supervisory expectations, similar to the CFPB Dodd-Frank Mortgage Rules Readiness Guide. A compliance guide for the Remittance Rule, along with a webinar and other helpful materials, may be found at *http://www.consumerfinance.gov/remittances-transfer-rule-amendment-to-regulation-e/*. The Bureau also periodically publishes *Supervisory Highlights* to share general information about the Bureau's examination findings without identifying specific companies (except for companies subject to enforcement actions already made public).

[10] 77 FR 6194 (Feb. 7, 2012); 77 FR 40459 (July 10, 2012); 77 FR 50244 (Aug. 20, 2012); 78 FR 6025 (Jan. 29, 2013); 78 FR 30662 (May 22, 2013); 78 FR 49365 (Aug. 14, 2013) (codified at 12 CFR part 1005, subpart B). On August 22, 2014, the Bureau released further amendments to the Remittance Rule, which are available at *http://files.consumerfinance.gov/f/201408_cfpb_final-rule_intl-money-transfer-small-entity.pdf*. For additional information about the Remittance Rule, see *http://www.consumerfinance.gov/remittances-transfer-rule-amendment-to-regulation-e/*.

[11] In commenting on this proposal, the State regulator associations also recommended that the Bureau consider a risk-scoped approach to examining larger participants. Although the Bureau's examination approach is not the subject of this rulemaking, the Bureau prioritizes supervisory activity among nonbank covered persons on the basis of risk; conducts risk-focused examinations to direct resources toward areas with higher degrees of risk to consumers; and focuses on an institution's ability to detect, prevent, and correct practices that present a significant risk of violating the law and causing consumer harm. *See generally* CFPB Supervision and Examination Manual 9, 10, 15, 19–22 (Oct. 1, 2012), *available at http://www.consumerfinance.gov/guidance/supervision/manual/*.

[12] The Bureau's supervisory authority also extends to service providers of those covered persons that are subject to supervision under 12 U.S.C. 5514(a)(1). 12 U.S.C. 5514(e); *see also* 12 U.S.C. 5481(26) (defining ''service provider'').

[13] The Bureau received a comment requesting the Bureau to preempt State regulation of money transmission. As noted, the purpose of this rulemaking is to define larger participants of a market for consumer financial products or services that will be subject to the Bureau's supervisory authority. Preemption of State regulation of money transmission is not required for that purpose, is not intended by the Bureau, and is beyond the scope of this rulemaking.

[14] 79 FR 5302 (Jan. 31, 2014).

[15] 12 CFR 1090.100–.103.

[16] 12 CFR 1090.104 (consumer reporting); 12 CFR 1090.105 (consumer debt collection); 12 CFR 1090.106 (student loan servicing).

[17] 15 U.S.C. 1693o–1(g); 12 CFR 1005.2, 1005.30.

''remittance transfers.'' [18] The definitions in existing § 1090.101 apply for terms that the Final Rule does not define, such as ''person'' and ''consumer.'' [19]

The Final Rule also sets forth a test to determine whether a nonbank covered person is a larger participant of the international money transfer market. An entity is a larger participant if it has at least one million aggregate annual international money transfers.[20] As prescribed by existing § 1090.102, any nonbank covered person that qualifies as a larger participant will remain a larger participant until two years after the first day of the tax year in which the person last met the applicable test.[21]

Pursuant to existing § 1090.103, a person can dispute whether it qualifies as a larger participant in the international money transfer market. The Bureau will notify an entity when the Bureau intends to undertake supervisory activity; the entity will then have an opportunity to submit documentary evidence and written arguments in support of its claim that it is not a larger participant. Section 1090.103(d) provides that the Bureau may require submission of certain records, documents, and other information for purposes of assessing whether a person is a larger participant of a covered market; this authority will be available to the Bureau to facilitate its identification of larger participants of the international money transfer market, just as in other markets.

IV. Legal Authority and Procedural Matters

A. Rulemaking Authority

The Bureau is issuing this Final Rule pursuant to its authority under: (1) 12 U.S.C. 5514(a)(1)(B) and (a)(2), which authorize the Bureau to supervise larger participants of markets for consumer financial products or services, as defined by rule; (2) 12 U.S.C. 5514(b)(7), which, among other things, authorizes the Bureau to prescribe rules to facilitate the supervision of covered persons under 12 U.S.C. 5514; and (3) 12 U.S.C. 5512(b)(1), which grants the Bureau the authority to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of Federal consumer financial law, and to prevent evasions of such law.

B. Effective Date of Final Rule

The Administrative Procedure Act generally requires that rules be published not less than 30 days before their effective dates.[22] The Bureau proposed that the Final Rule would be effective no earlier than 60 days after publication and received no comments relating to the effective date. The Bureau adopts December 1, 2014 as the effective date for the Final Rule, which is more than 60 days after publication.

V. Section-By-Section Analysis

Section 1090.107—International Money Transfer Market

Proposed § 1090.107 defined a market for international money transfers.[23] The Bureau received some comments that supported the proposed market scope and other comments that suggested that the Bureau should expand the scope of the market definition to include domestic money transfers. For the reasons that follow, the Bureau has opted to include only international money transfers in the market definition for this Final Rule.

As a general matter, international money transfers are electronic transfers of funds sent by nonbanks from consumers in the United States to persons or entities abroad.[24] Consumers who send money abroad often do so through money transmitter companies that are nonbanks.[25] Many money transmitters operate through closed networks, receiving and disbursing funds through their own outlets or through agents such as grocery stores, neighborhood convenience stores, or depository institutions. Some money transmitters may send transfers of any size, while others cap the size of transfers they send.

For an international transfer conducted through a money transmitter, a consumer typically provides basic identifying information about himself and the recipient and often pays cash sufficient to cover the transfer amount and any fees charged by the money transmitter. The consumer may be provided a confirmation code, which the consumer relays to the recipient. The money transmitter sends an instruction to a specified payout location or locations in the recipient's country where the recipient may pick up the transferred funds, often in cash and local currency, upon presentation of the confirmation code and/or other identification on or after a specified date. These transfers generally are referred to as cash-to-cash transfers.

Many money transmitters provide other types of transfers. For example, money transmitters may permit transfers to be initiated using credit cards, debit cards, or bank account debits and may use Web sites, agent locations, stand-alone kiosks, or telephone lines to do so. Abroad, money transmitters and their partners may allow funds to be deposited into recipients' bank accounts, distributed directly onto prepaid cards, or credited to mobile phone accounts. Funds also can be transferred among consumers' nonbank accounts identified by individuals' email addresses or mobile phone numbers. According to one survey of companies that send funds from the United States to Latin America and the Caribbean, 75 percent permit consumers to send transfers of funds that can be deposited directly into recipients' bank

[18] 12 CFR 1005.30(e)(2)(i).

[19] As a result, some terms may have different definitions for purposes of the Proposed Rule than they do for purposes of Regulation E. The definition of ''consumer'' in § 1090.101 is ''an individual or an agent, trustee, or representative acting on behalf of an individual,'' 12 CFR 1090.101, while the definition of ''consumer'' in Regulation E is ''a natural person,'' 12 CFR 1005.2(e). The definition of ''person'' in § 1090.101 is ''an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity,'' 12 CFR 1090.101, while the definition of ''person'' in Regulation E is ''a natural person or an organization, including a corporation, government agency, estate, trust, partnership, proprietorship, cooperative, or association,'' 12 CFR 1005.2(j).

[20] As the Bureau has explained in prior rulemakings, the criterion selected for one market in a larger-participant rulemaking is not necessarily appropriate for any other market that may be the subject of a future rulemaking. Instead, the Bureau tailors each test to the market to which it will be applied. 77 FR 42874, 42876 (consumer reporting) (July 20, 2012); 77 FR 65775, 65778 (consumer debt collection) (Oct. 31, 2012); 78 FR 73383, 73384 n.16 (student loan servicing) (Dec. 6, 2013).

[21] 12 CFR 1090.102.

[22] 5 U.S.C. 553(d).

[23] As noted above, the term ''international money transfer'' is very similar to the term ''remittance transfer'' as defined in the Remittance Rule, 12 CFR 1005.30(e), but differs in some substantive respects as specified below. Other definitions in this Final Rule are similarly based on Regulation E. Usage, or omission, of specific language from EFTA or Regulation E in the Final Rule is not an endorsement by the Bureau of any specific interpretation of EFTA or Regulation E.

[24] Although this Final Rule applies only to nonbank covered persons, similar services are also provided by depository institutions and credit unions, including those already subject to the Bureau's supervisory authority.

[25] CFPB, Report on Remittance Transfers 6 (July 20, 2011), *available at http://www.consumerfinance.gov/wp-content/uploads/2011/07/Report_20110720_RemittanceTransfers.pdf.* Federal law requires money transmitters that meet certain criteria to register as a ''money services business'' with the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN). 31 U.S.C. 5330; 31 CFR 1010.100(ff), 1022.380. Most States also have licensing requirements for similar types of entities.

accounts, including transfers initiated through the internet.[26]

International transfers play a critical role in the lives of many consumers in the United States. U.S. consumers send funds abroad for a number of reasons, including to assist family or friends with their expenses, to pay for purchases of goods, to pay the tuition of children studying abroad, or to purchase real estate. Data from the 2011 Current Population Survey (2011 CPS) show that more than 4 million households nationwide had used nonbanks to transfer funds to friends and family abroad in the preceding year, and more than 7 million households had used nonbanks to make such transfers at some time in the past.[27]

Transferring money to international recipients can present unique challenges for consumers and providers, many of which are addressed in the Bureau's Remittance Rule. Pricing for transfers is complex and may depend not only on fees and taxes, but also on exchange rates. Because wholesale currency markets fluctuate constantly, the exchange rates applied to individual international transfers may change from day to day, or even over the course of the day, depending on how frequently providers update their retail rates. Providers may also vary their exchange rates and fees charged based on a range of other factors, such as the sending and receiving locations, and the size and speed of the transfer. Taxes may vary depending on the type of provider, the laws of the recipient country, and various other factors. As a result, determining how much money will actually be received and which provider offers the lowest price can be challenging for consumers, particularly when not provided with proper disclosures.[28] In some cases, language barriers may further complicate consumers' ability to obtain and understand transaction information from providers and their agents.[29]

The Bureau believes that compliance with recent legislative and regulatory changes will significantly improve the predictability of remittances and provide consumers with better price information and recourse if they experience a problem with a transfer. Congress amended EFTA in the Dodd-Frank Act.[30] The Bureau then implemented the amendments to EFTA by promulgating the Remittance Rule, which went into effect on October 28, 2013.[31] Amendments to EFTA and the Remittance Rule created a comprehensive new system of consumer protections for remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries. First, the Remittance Rule generally requires that information be disclosed prior to and at the time of payment by the sender for the remittance transfer.[32] Second, under the Remittance Rule, consumers generally have thirty minutes after making payment to cancel a transfer.[33] Third, the Remittance Rule increases consumer protections when transfers go awry by requiring providers to investigate disputes and remedy certain types of errors.[34] The Remittance Rule applies to any institutions that send remittance transfers in the normal course of their business, including banks, credit unions, money transmitters, broker-dealers, and others. The Bureau and prudential regulators can examine depository institutions and credit unions within their supervisory authority for compliance with Regulation E, including the new Remittance Rule.

One objective of the Bureau's proposal was to bring nonbanks that are larger participants of the international money transfer market[35] within the Bureau's supervisory jurisdiction in order to promote the Bureau's goal of enforcing Federal consumer financial law consistently without regard to whether a person is a depository institution.[36] Supervision of larger participants of the international money transfer market will help to ensure that nonbank entities that provide a significant portion of the transactions to which the Remittance Rule applies are complying with these new and important consumer protections, as well as with other applicable requirements of Federal consumer financial law, including the prohibition on unfair, deceptive, or abusive acts or practices.

The Bureau lacks precise data on the international money transfer market and did not receive any comments that provided detailed information about the market. However, available data sources, including public information and confidential State supervisory data provided by three States, enabled the Bureau to conduct three analyses during the proposal stage to gain a general understanding of the basic contours of this nonbank market.[37] These analyses produced rough estimates of (1) the overall number of nonbanks that provide international money transfers; (2) the dollar volume and number of international money transfers market-wide; and (3) the dollar volume and number of international money transfers provided by nonbanks that provide at least 500,000, one million, or three million transactions per year.[38] The

[26] Manuel Orozco et al., Inter-American Dialogue, *The Market for Money Transfers: Ranking of Remittance Service Providers in Latin America and the Caribbean* 4 (Oct. 23, 2012), *available at http://www.thedialogue.org/uploads/Remittances_and_Development/LatAm_Final_120712.pdf.* Like cash-to-cash transfers, some of the transfers to bank accounts rely on closed networks, though others rely on open networks (between an entity and non-agents or non-affiliates) or reflect some characteristics of both open and closed network transactions.

[27] Fed. Deposit Ins. Corp., *National Survey of Unbanked and Underbanked Households* 32 (Sept. 2012), *available at http://www.fdic.gov/householdsurvey/2012_unbankedreport.pdf* (2011 CPS Report) (stating that 3.7 percent of households used ''nonbank remittances'' as defined in the survey in the preceding year); *id* at 142–43 (providing estimate of 120 million U.S. households in 2011 for purposes of the survey); *id.* at 79 (estimating the number of households that have used ''nonbank remittances'' as defined in the survey at any time in the past).

[28] *See* CFPB, Report on Remittance Transfers 17–21 (July 20, 2011); *see also* 77 FR 6194, 6199 (Feb. 7, 2012).

[29] *See* 77 FR 6194, 6199 (Feb. 7, 2012).

[30] Public Law 111–203, section 1073, 124 Stat. 1376, 2060 (2010).

[31] 77 FR 6194 (Feb. 7, 2012); 77 FR 40459 (July 10, 2012); 77 FR 50244 (Aug. 20, 2012); 78 FR 6025 (Jan. 29, 2013); 78 FR 30662 (May 22, 2013); 78 FR 49365 (Aug. 14, 2013) (codified at 12 CFR part 1005, subpart B). On August 22, 2014, the Bureau released further amendments to the Remittance Rule, which are available at *http://files.consumerfinance.gov/f/201408_cfpb_final-rule_intl-money-transfer-small-entity.pdf.*

[32] Public Law 111–203, section 1073(a)(4), 124 Stat. 1376, 2060 (2010) (codified at 15 U.S.C. 1693o–1(a)); 12 CFR 1005.31–.32.

[33] Public Law 111–203, section 1073(a)(4), 124 Stat. 1376, 2060 (2010) (codified at 15 U.S.C. 1693o–1(d)(3)); 12 CFR 1005.34.

[34] Public Law 111–203, section 1073(a)(4), 124 Stat. 1376, 2060 (2010) (codified at 15 U.S.C. 1693o–1(d)); 12 CFR 1005.33.

[35] International money transfers are consumer financial products or services pursuant to the Dodd-Frank Act. *See* 12 U.S.C. 5481(15)(A)(iv) (defining ''financial product or service'' to include ''engaging in deposit-taking activities, transmitting or exchanging funds, or otherwise acting as a custodian of funds or any financial instrument for use by or on behalf of a consumer''); 12 U.S.C. 5481(5)(A) (defining ''consumer financial product or service'' to include financial products or services that are offered or provided for use by consumers primarily for personal, family, or household purposes); *see also* 12 U.S.C. 5481(15)(A)(v) (defining ''financial product or service'' to include generally ''selling, providing, or issuing stored value or payment instruments,'' with specific exclusions); 12 U.S.C. 5481(15)(A)(vii) (defining ''financial product or service'' to include generally ''providing payments or other financial data processing products or services to a consumer by any technological means,'' with specific exclusions).

[36] 12 U.S.C. 5511(b)(4).

[37] For a description of the data sources used by the Bureau in deriving its estimates, see 79 FR 5302, 5305 n.34 (Jan. 31, 2014). The proposal identified several sources of uncertainty, which are discussed at 79 FR 5305–08.

[38] Prior to issuing its proposal, the Bureau conducted entity-level analyses and produced

Bureau did not receive any comments questioning or criticizing these analyses, which were described in the Bureau's proposal.

For its first analysis, the Bureau reviewed State licensing information and estimated that approximately 340 nonbanks provide international money transfers.[39] The Bureau's second analysis, an extrapolation of confidential supervisory data from California to generate nationwide estimates, indicates that the nonbank market of international money transfers, as defined here, accounted for roughly $50 billion transferred and 150 million individual transfers in 2012.[40]

The Bureau's third analysis developed entity-specific estimates of the number of international money transfers sent in 2012. Estimates were mostly derived using confidential supervisory data obtained from California, New York, and Ohio pursuant to memoranda of understanding. Using this analysis, the Bureau generated the following highly approximated estimates for the year 2012: (1) The highest tier of the market consists of about 10 nonbanks that each sent over 3 million international money transfers and together accounted for about three-fourths of all international money transfers; (2) The second tier of the market consists of about 15 nonbanks that each sent between 1 and 3 million international money transfers, accounting collectively for about one-sixth of all international money transfers; (3) Very few nonbanks sent between 500,000 and 1 million international money transfers, accounting collectively for about 1.5 percent of all international money transfers; and (4) The limited remaining market share is divided among a few hundred nonbanks that each sent less than 500,000 transfers in 2012.[41] These estimates do not include providers that are not licensed in California, New York, or Ohio, but as explained in the proposal, the Bureau's market research and review of licensing data suggest that most entities that provide over 500,000 international money transfers per year are licensed in at least one of those three States.[42]

The Bureau's proposal defined a nonbank market consisting solely of international money transfers. While a number of commenters expressed support for the Bureau's proposed definitions and approach to defining the market, several requested that the Bureau expand this larger-participant rule to include domestic transfers.[43] Those advocating for inclusion of domestic transfers offered differing reasons, including that (1) domestic and international money transfers are similar and are often treated similarly by State regulators, (2) including domestic transfers in this Final Rule could encourage providers to voluntarily apply the Remittance Rule requirements to domestic transfers even though such application is not required by the Remittance Rule, (3) it would be difficult to determine whether mobile payments are domestic or international money transfers, and (4) the benefits of supervision should be made available to consumers of domestic transfers as well.[44]

While transfers of money to domestic and international locations have some similar characteristics, several consumer advocacy group commenters recognized that international money transfers present challenges to providers and consumers that distinguish international money transfers from other transactions, such as domestic money transfers. As the Bureau noted in its proposal, these challenges can include, for example, foreign exchange rates, foreign taxes, and legal, administrative, and language complexities related to the fact that the funds are transferred to a foreign country. Many international money transfers are also subject to new protections under the Remittance Rule.[45] In light of these differences, the Bureau continues to believe it is appropriate to treat the international money transfer market as a separate market for purposes of this larger-participant rule.

The Bureau also does not deem it appropriate to adjust the scope of the larger-participant rule based on the assertion that doing so might encourage entities to apply Remittance Rule standards to transactions that are not subject to the Remittance Rule. The larger-participant rule does not impose any new business conduct obligations. Specifically, it does not change or expand the application of the Remittance Rule. Accordingly, the Bureau has no reason to believe that expanding the scope of this rule beyond what the Bureau has proposed would cause entities to apply Remittance Rule standards to their domestic transfers.

Another commenter expressed concern that mobile payment providers may not be able to determine whether their mobile payments are international money transfers or domestic transfers. Whether a transfer, including a mobile payment, is an international money transfer depends, in part, on whether it is sent by a ''sender'' to a ''designated recipient'' as those terms are defined in § 1090.107(a). As explained in the section-by-section discussion below, the Bureau intends that ''designated recipient'' and ''sender'' in the Final Rule will be interpreted in a manner consistent with the way the same terms in the Remittance Rule are interpreted. The commentary to the Remittance Rule interpreting ''designated recipient'' and ''sender'' provides relevant guidance and examples to help covered entities distinguish which transfers originate from a consumer in a State and which are to be received at a location physically outside of any State. This commentary should assist money transfer providers in determining whether their mobile payments are international money transfers for

highly approximated entity-by-entity estimates to inform its general understanding of the market and of the likely market coverage associated with potential activity thresholds. These entity-level approximations of dollar volume and number of transfers are not dispositive of whether the Bureau would ever seek to initiate supervisory activity or whether, in the event of a person's assertion that it is not a larger participant, the person would be found to be a larger participant.

[39] The Bureau's review of State licensing information is described at 79 FR 5302, 5306 n.36 (Jan. 31, 2014). As with its other market estimates for this rulemaking, the Bureau emphasizes that the estimate of 340 international money transfer providers could be either high or low due to limitations in the data utilized.

[40] For a description of how the Bureau used the California data to generate nationwide estimates and the assumptions made by the Bureau in doing the extrapolation, see 79 FR 5302, 5306–07 n.37 (Jan. 31, 2014).

[41] For a description of how the Bureau conducted this analysis and potential sources of inaccuracy, see 79 FR 5302, 5307 n.38 (Jan. 31, 2014).

[42] 79 FR 5302, 5307 n.39 (Jan. 31, 2014).

[43] In a joint comment, a group of industry participants also asked the Bureau to clarify that the market definition in this Final Rule has no antitrust implications. The Bureau neither defines markets for purposes of antitrust law, nor intends the market definition in this Final Rule to be used for any purpose other than determining larger-participant status.

[44] Industry participants cited to the volume of complaints relating to domestic transfers in the Bureau's consumer complaint database, to support their assertion that the benefits of supervision should be spread to consumers of domestic transfers. In addition to complaints about international money transfers, the Bureau has received consumer complaints about domestic transfers and a variety of other consumer financial products and services. The existence of complaints about other products and services does not, however, change the Bureau's view that it is appropriate to treat international money transfers as a distinct market for purposes of this larger-participant rule.

[45] In light of the close similarity between the Remittance Rule's definition of ''remittance transfer'' and the international money transfer market, the Bureau expects that most transfers in the international money transfer market would be subject to the Remittance Rule. However, some transfers that are in the international money transfer market under the Final Rule are not ''remittance transfers,'' as discussed in the section-by-section discussion of § 1090.107(a)'s ''international money transfer'' definition below.

purposes of this larger-participant rule.[46]

In light of the distinguishing characteristics of international money transfers and the other reasons set forth above, the Bureau declines to include domestic transfers in the market for which this Final Rule defines larger participants.[47] As the Bureau has explained, this larger-participant rulemaking is only one in a series. Nothing in this Final Rule precludes the Bureau from considering in future larger-participant rulemakings other markets for consumer financial products or services that might include domestic money transfers or other money services.

Section 1090.107(a)—Market-Related Definitions

Unless otherwise specified, the definitions in § 1090.101 should be used when interpreting terms in the Final Rule. Proposed § 1090.107(a) defined additional terms relevant to the international money transfer market. These terms include ''international money transfer,'' which delineates the scope of the identified market; ''designated recipient,'' ''international money transfer provider,'' ''sender,'' and ''State,'' which help to clarify the meaning of ''international money transfer''; and ''aggregate annual international money transfers,'' which is the criterion for assessing larger-participant status. The Bureau is adopting the definitions as proposed with the exception that it is streamlining the definition of ''aggregate annual international money transfer'' to facilitate application of the larger-participant test.

In the proposal, the Bureau noted that it had used the definition of ''remittance transfer'' and related definitions from Regulation E as a model in drafting the definitions applicable in this larger-participant rulemaking because remittance transfers make up a very substantial portion of the market activity in the international money transfer market that the Bureau sought to define. Additionally, the Remittance Rule definitions are familiar to industry and the Bureau. As explained in the proposal and below, the Bureau believes it is appropriate to deviate from the Remittance Rule definitions in specific ways to reflect the distinct needs of this larger-participant rulemaking.

Several industry commenters expressed support for the Bureau's general approach in developing definitions, while State regulator associations and one industry commenter suggested that greater conformity to the Remittance Rule would be preferable. The deviations that the Bureau proposed to make from the Remittance Rule definitions stem in part from the fact that the Remittance Rule imposes substantive consumer protection requirements, while the larger-participant rule differentiates larger participants from other participants in the international money transfer market in order to establish a supervisory program. To account for the different regulatory purposes and the specific needs of this rulemaking, the Bureau continues to believe that the proposed differences between the definitions in the Proposed Rule and the Regulation E definitions are necessary, as discussed below.[48]

Aggregate Annual International Money Transfers

The Bureau proposed aggregate annual international money transfers as the criterion that would be used in assessing whether an entity is a larger participant of the international money transfer market. The proposed definition of ''aggregate annual international money transfers'' was informed by the method of calculating ''annual receipts'' used by the Bureau in prior larger-participant rulemakings, which in turn is modeled in part on the method used by the U.S. Small Business Administration (SBA) in calculating ''annual receipts'' to determine whether an entity is a small business.[49] Proposed § 1090.107(a) defined the term ''aggregate annual international money transfers'' as the ''annual international money transfers'' of a nonbank covered person, aggregated with the ''annual international money transfers'' of its affiliated companies. Commenters generally expressed support for the substance of this definition, but some commenters expressed concern that the definition was confusing. For the reasons described below, the Bureau is streamlining the definition by counting transfers from the preceding year as opposed to using an average over up to three years, making corresponding technical changes, and otherwise adopting the definition as proposed.

Calculating annual international money transfers. The Bureau proposed that ''annual international money transfers'' of a nonbank covered person would be calculated in one of two ways depending on how long a person had been in business. The proposed definition annualized the number of transfers over the shorter of three years or the period an entity had been in business. One commenter stated that it seemed logical to use an average over several years but questioned whether the complexity of the proposed calculations was necessary. The commenter noted that the more complex the calculations, the greater the chance for error.

The Bureau agrees that a simpler approach is preferable for calculating annual international money transfers. The proposed approach would have smoothed out year-to-year fluctuations in an entity's transaction volume but would have resulted in more involved calculations, especially for affiliated companies. Because affiliated companies may be in business for varying lengths of time, the annual international money transfers of affiliated companies in some instances would have been calculated over different time periods using different calculation methods.[50]

[46] *See* Official Interpretations to Regulation E, 12 CFR part 1005, Supp. I, comment 30(c)(2)–1 to –3 and comment 30(g). Providers should already be applying this commentary to determine whether their mobile payments comply with the Remittance Rule.

[47] The Bureau's decision to define a market consisting solely of international money transfers will not prevent it from examining other consumer financial products or services offered by entities that qualify as larger participants of that market. If a larger participant of the international money transfer market offers domestic money transfer services to consumers, the Bureau can examine those transfers as part of its mission to assess compliance with Federal consumer financial law and to detect risks to consumers or to markets for consumer financial products and services. 12 U.S.C. 5514(b); 77 FR 42874, 42880 (July 20, 2012).

[48] As noted above and in the Bureau's proposal, some terms may have different definitions for purposes of the Final Rule than they do for purposes of Regulation E due to the larger-participant rule definitions in 12 CFR 1090.101. The definition of ''consumer'' in § 1090.101 is ''an individual or an agent, trustee, or representative acting on behalf of an individual,'' 12 CFR 1090.101, while the definition of ''consumer'' in Regulation E is ''a natural person,'' 12 CFR 1005.2(e). The definition of ''person'' in § 1090.101 is ''an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity,'' 12 CFR 1090.101, while the definition of ''person'' in Regulation E is ''a natural person or an organization, including a corporation, government agency, estate, trust, partnership, proprietorship, cooperative, or association,'' 12 CFR 1005.2(j). One commenter asserted that using different definitions than are used in Regulation E could cause confusion. The Bureau believes that having multiple definitions for the same term within 12 CFR part 1090 would cause more confusion than having different definitions for the same term in Regulation E and 12 CFR part 1090.

[49] 12 CFR 1090.104(a) (Consumer Reporting Rule); 12 CFR 1090.105(a) (Debt Collection Rule); 13 CFR 121.104 (SBA).

[50] The Proposed Rule provided that the annual international money transfers of each affiliated company of a nonbank covered person would be calculated separately prior to the aggregation, treating the affiliated company as if it were an independent nonbank covered person for purposes

The Bureau has weighed the benefits of the proposed multi-year approach against the additional complexity it entails and concludes that it is preferable to calculate annual international money transfers in the Final Rule based on international money transfers sent in the preceding year. Because the criterion directly measures the number of transfers in the market, it should not be subject to temporary fluctuations that are unrelated to an entity's market participation.[51] The Bureau believes that the single-year approach will make the Final Rule's definitions easier to apply, which should facilitate application of the detailed agent and affiliate-aggregation principles described below and alleviate the concern expressed by some commenters about the overall complexity of the definition of ''aggregate annual international money transfers.'' The Final Rule therefore provides that annual international money transfers of a nonbank covered person means the international money transfers provided by the nonbank covered person during the preceding calendar year.

Transfers involving agents. The proposed definition specified how to count transfers provided with the assistance of an agent. Under the proposal, the annual international money transfers of a nonbank covered person included international money transfers in which an agent acts on that person's behalf. The annual international money transfers of a nonbank covered person did not include international money transfers in which another person provided the international money transfers and the nonbank covered person performed activities as an agent on behalf of that other person.[52] For purposes of this part of the definition, the Bureau proposed to define an ''agent'' to include an agent or authorized delegate, as defined under State or other applicable law, or an affiliated company of a person that provides international money transfers when such agent, authorized delegate, or affiliated company acts for that person.[53] Comments from industry and a consumer advocacy group generally supported this approach. For the reasons that follow, the Bureau is finalizing the approach to agents as proposed.

Including transactions conducted by an agent in calculating a provider's annual international money transfers is consistent with the Remittance Rule, which places liability on the remittance transfer provider for violations by an agent when the agent is acting for the provider.[54] Not counting transactions conducted solely as an agent for a provider in assessing the agent's annual international money transfers is also consistent with the Bureau's determination that, for purposes of the Remittance Rule, agents acting on behalf of a remittance transfer provider are not, in doing so, themselves acting as remittance transfer providers.[55] Although entities that act solely as agents are not normally larger participants of the market under the Final Rule, the Bureau has the authority to supervise service providers to larger participants.[56] Accordingly, where an agent acts as a service provider to a larger participant, the Bureau has the authority to supervise the agent's performance of services for the larger participant.[57] In light of these considerations, the Bureau believes it is appropriate to count transactions in which an agent acts on behalf of a provider towards the annual international money transfers of that provider, and not towards the annual international money transfers of the agent itself.

Several commenters expressed support for this approach to handling transactions provided with the assistance of agents. One commenter stated that it agreed with including transfers by an agent when determining whether a provider is covered and agreed that transfers that an agent conducts for other providers should not be included in determining coverage. This commenter nevertheless urged the Bureau to simplify the specification of which transfers by agents are included in the calculation, without providing a specific suggestion. The Bureau is concerned that any such simplification could alter how transactions involving agents are handled, which the Bureau believes the commenter did not intend. In light of the important role that agents play in the international money transfer market, the Bureau has not changed this aspect of the definition but believes that streamlining the definition in the manner described above will simplify application of the agent provision as well.

One commenter supported the Bureau's approach to defining ''agent,'' noting that it is consistent with the approach taken in other applications, such as the Remittance Rule. Another commenter stated that, to the extent agency relationships are not already well-defined, the Bureau should offer a definition of ''agent'' that takes modern methods of money transmission into account. Rather than creating a self-contained definition of ''agent,'' the Bureau believes it is appropriate to define the term ''agent'' for purposes of this larger-participant rule by reference to the law of agency from the States and other applicable sources, which will continue to develop and evolve as the market changes. The Bureau is thus finalizing the proposed definition of ''agent'' and the approach to handling transfers provided with the assistance of an agent as proposed.

Affiliate aggregation. Under the Dodd-Frank Act, the activities of affiliated companies are to be aggregated for purposes of computing activity levels for rules under 12 U.S.C. 5514(a)(1).[58] The Proposed Rule laid out an approach for affiliate aggregation that was consistent with the dual methods proposed for calculating annual international money transfers described above. Several commenters expressed support for affiliate aggregation, though some requested clarification regarding

of the calculation. The Bureau is finalizing this aspect of the rule as proposed, as discussed below.

[51] Additionally, existing § 1090.102 provides that a person qualifying as a larger participant under this rule will remain a larger participant for at least two years after the beginning of the tax year in which it last met the larger-participant test. This provision will ensure that the Bureau has sufficient time to undertake and complete supervisory activities relating to a larger participant, even if the participant's market activity declines unexpectedly.

[52] In other words, an international money transfer provided by an international money transfer provider with the help of an agent acting on the provider's behalf would count towards the annual international money transfers of the provider but not the agent. However, a nonbank covered person's *aggregate* annual international money transfers may include transfers in which the nonbank covered person acted as an agent on behalf of an affiliated company that provided the transfer. This is because such transfers are included in the annual international money transfers of the affiliated company and a nonbank covered person's aggregate annual international money transfers include the annual international money transfers of each of its affiliated companies due to the affiliate-aggregation requirement discussed below.

[53] The definition of ''affiliated company'' is found in 12 CFR 1090.101.

[54] 12 CFR 1005.35. This is also consistent with the data analyzed by the Bureau prior to issuing the proposal, which generally include transactions conducted by agents on behalf of a provider in the transaction total for the provider.

[55] *See* Official Interpretations to Regulation E, 12 CFR part 1005, Supp. I, comment 30(f)–1.

[56] 12 U.S.C. 5514(e); *see also* 12 U.S.C. 5481(26)(A) (defining service provider).

[57] The Bureau also has the authority to supervise any nonbank covered person that it ''has reasonable cause to determine, by order, after notice to the covered person and a reasonable opportunity . . . to respond . . . is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.'' 12 U.S.C. 5514(a)(1)(C).

[58] 12 U.S.C. 5514(a)(3)(B).

the aggregation method in the Proposed Rule.

In light of the adjustments described above regarding the method of calculating annual international money transfers, the Bureau is making some corresponding modifications to the method for affiliate aggregation in the Final Rule. Consistent with the Proposed Rule, the Final Rule provides that the annual international money transfers of each affiliated company of a nonbank covered person are calculated separately in accordance with paragraphs (i) and (ii) of the definition, treating the affiliated company as if it were an independent nonbank covered person for purposes of the calculation. As explained above, paragraphs (i) and (ii) of the definition in the Final Rule provide that annual international money transfers are the international money transfers provided in the preceding year. To aggregate the annual international money transfers of affiliated companies, the Final Rule provides that the annual international money transfers of a nonbank covered person must be aggregated with the annual international money transfers of any person that was an affiliated company of the nonbank covered person at any time during the preceding calendar year. The Final Rule further provides that the annual international money transfers of the nonbank covered person and its affiliated companies are aggregated for the entire preceding calendar year, even if the affiliation did not exist for the entire calendar year. Because annual international money transfers will in all cases be calculated over the preceding year, the Bureau is finalizing the rule without the provisions in the Proposed Rule that explained how to aggregate affiliated companies' annual international money transfers if calculations were done over different time periods. These adjustments further clarify and streamline the ''aggregate annual international money transfer'' definition, while accomplishing the statutory requirement of affiliate aggregation.

In their joint comment, two State regulator associations requested clarification regarding the operation of the proposed ''aggregate annual international money transfer'' definition. They noted that many banks utilize nonbank providers for remittance transfers and suggested that issues could arise if international transfers are aggregated between affiliates and agents without regard to the source of the transfers. They also expressed concern that there may be an issue with double counting or artificially inflating the size of measured entities, if business customers, consumers, bank-to-bank account transactions, and authorization agents are all counted together.

The Bureau has crafted the Final Rule's definitions to ensure that the term ''aggregate annual international money transfers'' only includes certain transfers. Transactions for business customers are not part of the criterion because the rule only counts transactions initiated by a consumer primarily for personal, family, or household purposes.[59] With respect to bank transactions, the rule as proposed and finalized operates as follows: First, only nonbank covered persons can be larger participants under the test in § 1090.107(b).[60] Second, if a larger participant has an affiliate that is an insured depository institution or insured credit union, that affiliate is not subject to the affiliate-aggregation requirements of part (iii) of the definition of ''aggregate annual international money transfers.''[61] Third, if a bank is operating as an agent on behalf of an international money transfer provider for some international money transfers, those transfers would be included in the provider's count pursuant to the agent provisions in part (ii) of the definition. The Bureau expects that the Final Rule's streamlined definition of ''aggregate annual international money transfers'' will make these aspects of the rule easier to understand and apply.

The Bureau also received a joint comment from a group of money services providers requesting guidance on how the Bureau plans to conduct examinations of smaller affiliated companies that would not be larger participants but for their affiliation with larger companies. The Bureau may supervise these smaller affiliated companies as part of an examination of the larger affiliated company or independently. Although the Bureau's approach to examinations is not the subject of this rulemaking, the Bureau will exercise its supervisory authority with respect to affiliated companies using a risk-based approach and will coordinate with appropriate State regulators, just as it does with respect to other supervised nonbank entities.

In light of the considerations described above, the Bureau is finalizing the definition of ''aggregate annual international money transfers'' largely as proposed. As noted, the Final Rule includes a revised calculation method based on the preceding year's transfers with corresponding changes in the affiliate-aggregation approach.

Designated Recipient

The Bureau proposed to define ''designated recipient'' in § 1090.107(a) as any person specified by the sender as the authorized recipient of an international money transfer to be received at a location in a foreign country. This proposed definition was based on the definition of ''designated recipient'' in the Remittance Rule,[62] but replaced ''remittance transfer'' with ''international money transfer'' and incorporated the larger-participant definition of ''person'' from § 1090.101. The Bureau intends the term ''designated recipient'' to be interpreted based on the interpretation of the term in the Remittance Rule, including its commentary,[63] to the extent appropriate given the different regulatory contexts of the definitions. The Bureau did not receive any comments that specifically addressed the definition of ''designated recipient'' and is adopting the definition of ''designated recipient'' as proposed.

International Money Transfer

Proposed § 1090.107(a) defined the term ''international money transfer'' to mean the electronic transfer of funds requested by a sender that is sent by an international money transfer provider to a designated recipient. As proposed, the term applied regardless of whether the sender holds an account with the international money transfer provider, and regardless of whether the transaction also is an ''electronic fund transfer,'' as defined in Regulation E, 12

[59] As discussed below, ''sender'' is defined to mean ''a consumer in a State who primarily for personal, family, or household purposes requests an international money transfer provider to send an international money transfer to a designated recipient.'' The Bureau recently provided further guidance in the Remittance Rule commentary relating to when senders are considered to be requesting a transfer primarily for personal, family, or household purposes, which may help to clarify the meaning of the same terms in § 1090.107(a). 12 CFR part 1005, Supp. I, comment 30(g)–2 and 30(g)–3, *available at http://files.consumerfinance.gov/f/201408_cfpb_final-rule_intl-money-transfer-small-entity.pdf.*

[60] Pursuant to the definition in § 1090.101, a nonbank covered person does not include any persons described in 12 U.S.C. 5515(a) and 5516(a).

[61] This is because the affiliate-aggregation requirement only applies to ''affiliated companies,'' and the definition of ''affiliated company'' in 12 CFR 1090.101 specifically excludes insured depository institutions and insured credit unions.

[62] 12 CFR 1005.30(c).

[63] *See* Official Interpretations to Regulation E, 12 CFR part 1005, Supp. I, comment 30(c). The Bureau recently added to comment 30(c) in the Remittance Rule commentary, which is available at *http://files.consumerfinance.gov/f/201408_cfpb_final-rule_intl-money-transfer-small-entity.pdf.* The Bureau intends that this additional commentary and any future amendments to the Remittance Rule commentary will be used when interpreting the definition of ''designated recipient'' in this Final Rule, to the extent appropriate given the different regulatory contexts.

CFR 1005.3(b). The proposed definition did not include certain transfers related to the purchase or sale of a security or commodity that are excluded from the definition of ''electronic fund transfer'' under 12 CFR 1005.3(c)(4). The Bureau received several comments discussing the relationship of the term ''international money transfer'' to the term ''remittance transfer'' in the Remittance Rule, as well as one comment that requested clarification about the Proposed Rule's impact on broker-dealers. For the reasons set forth below, the Bureau is finalizing the definition of ''international money transfer'' as proposed.

The proposed definition of ''international money transfer'' tracked the Remittance Rule's definition of ''remittance transfer,''[64] except in two respects. First, the proposed definition substituted ''international money transfer provider'' in each place where the term ''remittance transfer provider'' appears in 12 CFR 1005.30(e). Second, the Proposed Rule defined ''international money transfer'' without regard to the amount of the transfer, unlike the Remittance Rule, which excludes transfers of $15 or less from the definition of ''remittance transfer.''[65]

The Bureau received several comments on the proposed definition of ''international money transfer.'' These commenters generally agreed with the approach of basing the definition of ''international money transfer'' on the definition of ''remittance transfer'' in the Remittance Rule, and some expressed support for the specific changes in the Proposed Rule. One commenter encouraged the Bureau to use the definition of ''remittance transfer'' in the Remittance Rule without any changes, on the ground that the proposed changes would needlessly invite confusion and disparate interpretations by courts and other officials. Another commenter recommended that the Bureau exclude transfers of $15 or less in order to be consistent with the Remittance Rule, expressing concern that not doing so would cause confusion and inconsistent application of standards in examinations because examiners will be examining for compliance with the Remittance Rule.

The Bureau does not agree that the differences between the Proposed Rule's definition of ''international money transfer'' and the definition of ''remittance transfer'' are needless or that it would be clearer to use the term ''remittance transfer'' in this rule. The Remittance Rule includes an exclusion for transfers of $15 or less[66] because the Dodd-Frank Act's definition of ''remittance transfer'' does not include transfers ''in an amount that is equal to or lesser than the amount of a small-value transaction determined, by rule, to be excluded from the requirements under section 906(a) [of EFTA].''[67] While the Dodd-Frank Act's definition of ''remittance transfer'' is applicable to the Remittance Rule, it is not applicable to the Bureau's authority to supervise larger participants in markets for consumer financial products or services. The Bureau proposed to include small-value transactions as ''international money transfers'' on the ground that small-value transactions comprise part of the same market as larger transactions and the number of international money transfers provided by an international money transfer provider reflects the extent of a provider's market participation. The comments did not provide new information to the contrary. Because the scope of transfers covered by the term ''international money transfer'' differs from the scope of the term ''remittance transfer,''[68] the Bureau believes it is appropriate to use a different name than ''remittance transfer.''

The Bureau does not believe that different definitions in the Remittance Rule and this rule will create significant confusion or result in inconsistent application of standards in the examination process because the two rules serve different purposes. The definition of ''international money transfer'' will be used to identify the transfers to be counted when assessing whether an entity is large enough to be subject to Bureau supervision as a larger participant. It does not determine the scope of any substantive consumer protection requirement, nor does it determine the limits of the Bureau's examination authority over entities that are larger participants. If an entity is determined to be a larger participant, the Bureau may examine the entire entity for compliance with all Federal consumer financial law and assess and detect risks to consumers or to markets for consumer financial products and services posed by any activity of the entity, not just the activities that initially rendered the entity subject to Bureau supervision.[69] By contrast, the definition of ''remittance transfer'' in the Remittance Rule determines which transfers are subject to the substantive requirements of the Remittance Rule. In light of the different functions of these two definitions, the Bureau believes that the differences in the definitions are warranted and unlikely to result in significant confusion.[70]

The Bureau also does not expect the difference in definitions between ''remittance transfer'' and ''international money transfer'' to cause courts or others to misinterpret the term ''international money transfer.'' As the Bureau stated in its proposal, the Bureau intends the term ''international money transfer'' to be interpreted in the same manner as the term ''remittance transfer,'' with the terms ''electronic transfer of funds'' and ''sent by an international money transfer provider'' interpreted based on the interpretation of parallel terms in Regulation E,[71] to the extent appropriate given the definitions' different regulatory contexts. Of course, where the definitions differ (as, for example, with the small-value transaction exclusion), differing interpretations would be appropriate. The Bureau therefore declines to make any changes based on the comments received.

In addition to the comments that specifically addressed the definition of ''international money transfers,'' the Bureau also received a comment from a trade association working group made up of broker-dealers that provide remittance transfer services. The group noted that the Bureau's Proposed Rule does not specifically discuss broker-dealers regulated by the Securities and Exchange Commission (SEC). The group cited Dodd-Frank Act section 1027(i)(1), which provides that ''[t]he Bureau shall have no authority to exercise any power to enforce this title with respect to a

[64] 12 CFR 1005.30(e).

[65] 12 CFR 1005.30(e)(2)(i).

[66] *Id.*

[67] 15 U.S.C. 1693o–1(g)(2)(B). The Board of Governors of the Federal Reserve System previously determined by rule that financial institutions are not subject to the EFTA section 906(a) requirement to provide electronic terminal receipts for small-value transfers of $15 or less. 12 CFR 1005.9(e).

[68] For example, as noted above transfers of $15 or less may be international money transfers but are not remittance transfers. Additionally, transfers that are sent by depository institutions may be remittance transfers but cannot be international money transfers because, as explained below, an international money transfer provider must be a nonbank covered person.

[69] 12 U.S.C. 5514(b); 77 FR 42874, 42880 (July 20, 2012).

[70] The commenters did not identify any significant administrative challenges that would make it difficult to include small-value transactions when counting the total number of international money transfers provided by a nonbank covered person. Indeed, as the Bureau mentioned in the Proposed Rule, the State supervisory data obtained by the Bureau for this rulemaking include transfers of $15 or less.

[71] *See* Official Interpretations to Regulation E, 12 CFR part 1005, Supp. I, comment 30(e).

person regulated by the Commission.'' [72] It asked the Bureau to acknowledge this statutory exclusion in the Final Rule itself on the ground that this would alleviate any potential confusion or misinterpretation among broker-dealers. The commenter did not suggest how the Proposed Rule might contravene the limitations on the Bureau's authority to exercise its power to enforce title X with respect to persons regulated by the Commission, and the Bureau does not believe that the Proposed Rule is inconsistent with these limitations. Moreover, the Final Rule does not require persons to take any action except in response to the initiation of supervisory activity by the Bureau, and the Bureau does not initiate supervisory activity if it believes that doing so would exceed its authority under the Dodd-Frank Act, or any other applicable law. Accordingly, the Bureau does not believe that it is necessary to recite the section 1027(i) exclusion or any other statutory exclusion in the Final Rule.

The Bureau notes that like the Remittance Rule and Regulation E generally, the proposed definition of ''international money transfer'' already excludes a transfer of funds if the primary purpose of the transfer was the purchase or sale of a security or commodity regulated by the Commission, or purchased or sold through a broker-dealer regulated by the Commission.[73] The broker-dealer trade association working group did not address this proposed exclusion in its comment, and the Bureau did not receive any other comments relating to this particular exception.

The Bureau has limited information about the volume of broker-dealers' transactions that are international money transfers under the Proposed Rule because the primary data sources used by the Bureau in this rulemaking do not include any broker-dealers registered with the Commission and the trade group commenter and other commenters did not provide any data. However, the Bureau is not aware of any broker-dealer registered with the Commission that would meet the threshold of one million aggregate annual international money transfers under the definitions as proposed, and no commenter identified any.[74] The Proposed Rule incorporates an exclusion from Regulation E that encompasses those broker-dealer transactions that the Bureau believes should be excluded from the international money transfer market. Accordingly, the Bureau is finalizing the definition of ''international money transfer'' as proposed.

International Money Transfer Provider

Proposed § 1090.107(a) defined the term ''international money transfer provider'' to mean any nonbank covered person that provides international money transfers for a consumer, regardless of whether the consumer holds an account with such person. Consistent with the Proposed Rule's definition of ''international money transfer,'' the proposed definition of ''international money transfer provider'' tracked the definition of ''remittance transfer provider'' in the Remittance Rule closely,[75] with the following exceptions. First, the proposed definition replaced ''remittance transfer'' with ''international money transfer.'' Second, for consistency with the rest of the larger-participant rule, the proposed definition replaced the first reference to ''person'' with ''nonbank covered person'' [76] and incorporated the larger-participant rule's definition of ''consumer'' rather than the Regulation E definition. Third, the Bureau did not incorporate the ''remittance transfer provider'' definition's requirement that transfers be provided ''in the normal course of business.'' [77] The Bureau explained that such a limitation is unnecessary in the definition of ''international money transfer provider'' because the Proposed Rule would not impose any new business conduct obligations and would require that an international money transfer provider have at least one million aggregate annual international money transfers to be a larger participant.

The Bureau received several comments expressing support and no comments raising concerns regarding this proposed definition and adopts the definition as proposed. As the Bureau explained in the proposal, the Bureau intends the commentary to the Remittance Rule [78] to be used to guide in interpreting the term ''international money transfer provider'' in § 1090.107(a), to the extent appropriate given the definitions' different regulatory contexts.

Sender

Proposed § 1090.107(a) defined the term ''sender'' to mean a consumer in a State who primarily for personal, family, or household purposes requests an international money transfer provider to send an international money transfer to a designated recipient. This proposed definition largely tracked the definition of ''sender'' in the Remittance Rule, but replaced ''remittance transfer'' with ''international money transfer'' and

[72] 12 U.S.C. 5481(21) defines ''person regulated by the Commission'' as a person who is:

(A) a broker or dealer that is required to be registered under the Securities Exchange Act of 1934;

(B) an investment adviser that is registered under the Investment Advisers Act of 1940;

(C) an investment company that is required to be registered under the Investment Company Act of 1940, and any company that has elected to be regulated as a business development company under that Act;

(D) a national securities exchange that is required to be registered under the Securities Exchange Act of 1934;

(E) a transfer agent that is required to be registered under the Securities Exchange Act of 1934;

(F) a clearing corporation that is required to be registered under the Securities Exchange Act of 1934;

(G) any self-regulatory organization that is required to be registered with the Commission;

(H) any nationally recognized statistical rating organization that is required to be registered with the Commission;

(I) any securities information processor that is required to be registered with the Commission;

(J) any municipal securities dealer that is required to be registered with the Commission;

(K) any other person that is required to be registered with the Commission under the Securities Exchange Act of 1934; and

(L) any employee, agent, or contractor acting on behalf of, registered with, or providing services to, any person described in any of subparagraphs (A) through (K), but only to the extent that any person described in any of subparagraphs (A) through (K), or the employee, agent, or contractor of such person, acts in a regulated capacity.

[73] This is because the proposed definition excludes any transfer that is excluded from the definition of ''electronic fund transfer'' under 12 CFR 1005.3(c)(4).

[74] In a letter sent outside this rulemaking, one industry trade association working group indicated that its broker-dealer members send an average of approximately 43,000 wires annually per firm. Letter from Manisha Kimmel, Executive Director, Financial Information Forum, to David Blass, Chief Counsel, SEC Division of Trading and Markets (Dec. 12, 2012), *available at http://www.sec.gov/divisions/marketreg/mr-noaction/2012/financial-information-forum-121412-rege.pdf.* While this figure reflects only wires sent by the group's members, the low average suggests that most broker-dealers do not send anywhere near the proposed threshold of one million aggregate annual international money transfers per year. Further, the average could include some transfers that would not be annual international money transfers as that term is defined in the Proposed Rule. For example, a primary purpose of a portion of broker-dealers' transfers could be the purchase or sale of a security or commodity regulated by the SEC, or purchased or sold through a broker-dealer regulated by the SEC. Still other broker-dealer transfers could be transfers that are not sent primarily for personal, family, or household purposes. Further, it is possible that the figure includes some domestic wire transfers.

[75] 12 CFR 1005.30(f).

[76] ''Nonbank covered person'' includes (1) any person that engages in offering or providing a consumer financial product or service; and (2) any affiliate of a person that engages in offering or providing a consumer product or service if such affiliate acts as a service provider to such person, but does not include any persons described in 12 U.S.C. 5515(a) and 5516(a). 12 CFR 1090.101.

[77] 12 CFR 1005.30(f).

[78] Official Interpretations to Regulation E, 12 CFR part 1005, Supp. I, comment 30(f).

''remittance transfer provider'' with ''international money transfer provider.'' [79] The Proposed Rule also incorporated the definition of ''consumer'' from the larger-participant rule rather than the definition from Regulation E, and the Bureau has decided to finalize this aspect of the proposal to minimize confusion and maintain consistency with the rest of the larger-participant rule. The Bureau did not receive any comments that specifically addressed the proposed definition of ''sender'' and adopts the definition as proposed. The Bureau intends the term ''sender'' to be interpreted in the same manner as the term ''sender'' in the Remittance Rule,[80] to the extent appropriate given the definitions' different regulatory contexts.

State

Proposed § 1090.107(a) defined the term ''State'' to mean any State, territory, or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; or any political subdivision thereof. This proposed definition was drawn from the definition of ''State'' in Regulation E subpart A,[81] and the Bureau intends for it to be interpreted accordingly. The Bureau did not receive any comments that specifically addressed the proposed definition of ''State'' and adopts the definition as proposed.

1090.107(b)—Test To Define Larger Participants

Criterion

The Bureau noted in its proposal that it was considering a number of possible criteria that could be used alone or in combination to assess whether a nonbank covered person is a larger participant of the market for international money transfers, including aggregate annual international money transfers, annual receipts, and annual transmitted dollar volume. The Bureau proposed to use aggregate annual international money transfers as the criterion and invited comment on the proposed criterion, the alternatives identified in the proposal, and any other possible criteria that commenters believed might be superior. In addition to the comments discussed above regarding whether the market should include domestic transfers and how ''aggregate annual international money transfer'' should be defined,[82] the Bureau received some comments supporting its proposed criterion and one comment advocating the use of two criteria rather than a single criterion. For the reasons that follow, the Bureau has decided to adopt ''aggregate annual international money transfers'' as the sole criterion in the Final Rule, with the definitional modifications described above.

Several commenters expressed support for the Bureau's proposed criterion. A consumer advocacy group indicated that it was pleased that the proposed criterion counts all transfers, regardless of amount. This commenter noted that as mobile technologies advance and other market innovations take place, more consumers may choose to send smaller, more frequent payments abroad.

Another commenter expressed concern that using aggregate annual international money transfers could prompt providers to encourage consumers to restructure their transactions in order to avoid supervision. The commenter speculated, for example, that it would not be surprising if some money transfer providers offered discounts to consumers who send fewer transfers in order to stay below the threshold. To avoid this, the commenter suggested that the Bureau should use two criteria—dollar volume and aggregate annual international money transfers—and treat an entity as a larger participant if it meets the threshold set for either of two criteria.

The Bureau does not believe that a second criterion is necessary in this market and is not inclined to add one due to the complexity it would entail for the Bureau and any industry participants who seek to assess whether they are larger participants. The Bureau believes that market conditions and consumer preferences are more likely to drive how transactions are structured than a desire to evade supervision. Moreover, the Bureau has an array of tools available if it learns that entities are in fact restructuring their transactions in an effort to evade supervision as larger participants.[83]

As the Bureau explained in the Proposed Rule, the Bureau believes that aggregate annual international money transfers is an appropriate criterion by itself because it measures, in several meaningful ways, the nonbank provider's level of participation in the market and impact on consumers. First, the number of transfers reflects the extent of interactions an international money transfer provider has with consumers because each transfer represents a single interaction with at least one consumer. Second, the number of transfers is a relatively durable metric in the face of changing market conditions such as fluctuating exchange rates or inflation. Third, because international money transfer providers often are paid, in part, on a per-transfer basis, the number of transfers is related to the revenue received, another indicator of market participation.

The Bureau anticipates that the streamlined definition of ''aggregate annual international money transfers'' described above will be relatively straightforward and objective for an international money transfer provider to calculate, should the occasion to do so arise.[84] Adding an alternative criterion of dollars transmitted would significantly increase the complexity of the rule, by requiring additional definitions, data, and calculations. The Bureau declines to complicate the test for defining larger participants in this market by adding a second criterion with its own threshold. In light of all of the considerations described above, the

[79] 12 CFR 1005.30(g).

[80] Official Interpretations to Regulation E, 12 CFR part 1005, Supp. I, comment 30(g).

[81] The Bureau proposed adopting the definition in Regulation E with minor stylistic changes to the last clause of the definition. *Cf.* 12 CFR 1005.2(*l*) (''''State' means any State, territory, or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; *or any political subdivision of the thereof in this paragraph (l).''*) (emphasis added).

[82] As noted above, some commenters suggested that the Bureau should expand the market to include domestic transfers, an issue discussed in the section-by-section discussion of § 1090.107 above. Other commenters discussed the proposed definitions of ''aggregate annual international money transfer'' and related terms such as ''international money transfer.'' Those comments and the changes the Bureau has made to those definitions are discussed in the section-by-section analysis of § 1090.107(a) above.

[83] For example, the Bureau could revisit the criterion decision for this larger-participant rule or could establish supervisory authority over particular entities that pose risks to consumers based on a reasonable-cause determination pursuant to the Bureau's risk determination rule, 12 CFR part 1091. It could also use non-supervisory approaches, including initiating enforcement investigations where appropriate.

[84] The Bureau expects that many market participants already assemble data generally related to the number of international transactions that they provide for internal business purposes, particularly because many providers are compensated on a per-transfer basis. Moreover, many providers are required to report transaction data to State regulators. The Bureau believes that these existing practices will help providers to estimate their aggregate annual international money transfers, and no commenters suggested otherwise. The Bureau expects that some market participants may choose to track the number of remittance transfers they provide each year, which could provide another source for estimates of aggregate annual international money transfers because the definition of the criterion roughly tracks the definition of ''remittance transfer'' used in the Remittance Rule. Accordingly, the Bureau believes that many market participants interested in doing so already have sufficient data to estimate whether their aggregate annual international money transfers exceed a given transaction threshold.

Bureau has adopted ''aggregate annual international money transfers'' as the sole criterion, as proposed.

Threshold

Under the Proposed Rule, a nonbank covered person would be a larger participant of the international money transfer market if the nonbank covered person has at least one million aggregate annual international money transfers. The Bureau proposed to apply a single threshold regardless of where the provider operates in the United States or where the recipient is located outside of the United States. The Bureau received comments supporting the Bureau's proposed approach, as well as comments advocating a higher or lower threshold or suggesting that the Bureau should add regional or localized alternative tests. For the reasons that follow, the Bureau has decided to finalize the single threshold of one million aggregate annual international money transfers as proposed.

The Bureau's estimates described above indicate that a threshold of one million aggregate annual international money transfers will bring within the Bureau's supervisory authority approximately 25 international money transfer providers that collectively provided about 140 million transfers in 2012, with a total volume of about $40 billion.[85] These nonbanks consist of both entities that send money to most of the countries in the world and entities that focus on sending money to particular recipient countries or regions.

Some commenters expressed support for the proposed threshold.[86] One noted that it agreed with the Bureau that the threshold would further the Bureau's goal of supervising market participants that represent a substantial portion of the market and have a significant impact on consumers.

Other commenters encouraged the Bureau to lower the threshold to 500,000 aggregate annual international money transfers. In a joint comment, five large money transmitters suggested that lowering the threshold would extend the benefits of supervision to more entities. Relying on Bureau estimates, these commenters also noted that even with this lower threshold there would be more larger participants in the consumer debt collection market than there would be in the international money transfer market. A comment from a consumer advocacy group asserted that there may be a natural dividing line at 500,000 transfers because the Bureau's data suggest that there are a small number of entities that have between 500,000 and 1,000,000 aggregate annual international money transfers and a much larger number of entities with less than 500,000 aggregate annual international money transfers.

A trade association representing banks urged the Bureau to adopt an even lower threshold of 100,000 transfers. It argued that this would further the Bureau's goal of parity between banks and nonbanks and be more consistent with the 100-transfer safe harbor that the Bureau established in the Remittance Rule definition of ''remittance transfer provider'' for purposes of determining whether an entity provides transfers in the ''normal course of business''.[87]

The Bureau does not agree that 500,000 or 100,000 aggregate annual international money transfers would be a more appropriate or natural threshold than one million in this market at this time. According to the Bureau's estimates, over 90 percent of market activity is conducted by entities with over one million aggregate international money transfers, and cutting the proposed threshold in half or reducing it by an even larger factor would only marginally increase the proportion of market activity covered by the rule, while extending coverage to companies that are substantially smaller in size.[88]

The Bureau also does not agree with one commenter's suggestion that the number of larger participants in this market should align with the number in the consumer debt collection market. There is no reason to expect that the number of larger participants in this market would be the same as the number in any other market because the Bureau tailors the criterion and threshold to the specific characteristics of each distinct market.

Similarly, there is no reason to think that the threshold for this larger-participant rule should in any way resemble the number of transfers that disqualifies an entity from claiming a safe harbor when assessing whether the entity is providing transfers in the ''normal course of business'' for purposes of the Remittance Rule's definition of ''remittance transfer provider''.[89] The two provisions serve different purposes: One determines which entities are larger participants in the international money transfer market, while the other helps to determine which entities are exempt from the substantive requirements of the Remittance Rule because they do not provide remittance transfers in the normal course of their business. The commenter that cited the Remittance Rule's ''normal course of business'' safe harbor as a basis for lowering the larger-participant threshold also implied that the safe harbor applies only to banks. In fact, the Remittance Rule and its ''normal course of business'' safe harbor apply to both banks and nonbanks.

Although it is true that a lower threshold could bring more entities under the Bureau's supervisory authority, that is not a reason by itself to lower the threshold. The Bureau has a variety of tools that it can use should concerns emerge regarding nonbank market participants that have less than one million aggregate annual international money transfers. The Bureau could, for example, establish supervisory authority over a particular company that poses risks to consumers based on a reasonable-cause determination pursuant to the Bureau's risk determination rule, 12 CFR part 1091. It could also use non-supervisory approaches where appropriate, such as initiating enforcement investigations, coordinating with State regulators, State attorneys general, and the Federal Trade

[85] 79 FR 5302, 5307 n.38, 5311 & n.67 (Jan. 31, 2014) (explaining methodology used and its potential limitations). According to the Bureau's estimates, these 25 providers constitute less than 10 percent of all participants in this nonbank market. *Id.* at 5306 n.36, 5307 n.38, 5311 n.69.

[86] While agreeing with the proposed threshold, one of these commenters encouraged the Bureau to monitor smaller nonbank market participants and to use its authority under 12 U.S.C. 5514(a)(1)(c), which authorizes the Bureau to supervise entities that pose risks to consumers based on a reasonable-cause determination.

[87] 12 CFR 1005.30(f)(2)(i) creates a safe harbor with respect to the phrase ''normal course of business'' in the definition of ''remittance transfer provider,'' which determines whether a person is required to comply with the Remittance Rule. Pursuant to § 1005.30(f)(2)(i), a person is deemed not to be providing remittance transfers for a consumer in the normal course of its business if the person provided 100 or fewer remittance transfers in the previous calendar year, and provides 100 or fewer remittance transfers in the current calendar year. A person that sends more than 100 remittance transfers in a calendar year does not necessarily provide remittance transfers for consumers in the normal course of business. Rather, whether such a person provides remittance transfers in the normal course of business depends on the facts and circumstances, including the total number and frequency of remittance transfers sent by the provider. *See* Official Interpretations to Regulation E, 12 CFR part 1005, Supp. I, comment 30(f)–2.

[88] 79 FR 5302, 5307 n.38, 5311 & n.68 (Jan. 31, 2014) (explaining methodology used and its potential limitations). The Bureau estimates that the nonbanks that send between 500,000 and 1 million international money transfers per year account collectively for only about 1.5 percent of all international money transfers. *Id.* at 5307 & n.38.

[89] Like the proposal, the Final Rule's definition of ''international money transfer provider'' does not incorporate the ''normal course of business'' language from the Remittance Rule's definition of ''remittance transfer provider,'' for the reasons explained in the section-by-section analysis of the definition of ''international money transfer provider'' above.

Commission, and engaging in research and monitoring. In light of all of the considerations described above, the Bureau declines to lower the threshold.

In contrast to the comments received from industry and consumer groups, two State regulator associations suggested raising the threshold to three million aggregate annual international money transfers due to the States' supervisory activity in the market. The State regulator associations suggested that three million transfers would be more in line with the larger-participant thresholds that the Bureau has set in other markets.

As noted above, the Bureau tailors the threshold in each market to the specific characteristics of the particular market. According to the Bureau's estimates, raising the threshold from one to three million aggregate annual international money transfers in this market would remove from the rule's coverage more than half of the nonbanks covered by the proposal (approximately 15 out of 25 entities) and would significantly decrease the proportion of market activity covered by the rule.[90] The Bureau recognizes the important role that State regulators play in this market. As indicated in the Proposed Rule, the Bureau will coordinate with appropriate State regulatory authorities and will consider the extent of State supervisory activity when prioritizing individual examinations. The Bureau does not, however, believe it is appropriate to remove entities with between one and three million aggregate annual international money transfers categorically from supervision as larger participants, given the significant role that these entities play in the market.

One commenter suggested that the Bureau should supervise all providers, regardless of size, while others suggested that the Bureau should include all publicly-traded providers in its larger-participant definition. The Bureau does not believe that including a category of providers regardless of size would be consistent with 12 U.S.C. 5514(a)(1)(B), which authorizes the Bureau to define ''larger participants'' of other markets for consumer financial products or services.[91] The Bureau therefore declines to make the changes suggested by these commenters.

The Bureau proposed a single threshold regardless of the destination of a provider's transfers but also indicated that it was considering, as an alternative, establishing different thresholds based on destination region. In their joint comment five large money transmitters encouraged the Bureau to supplement the Bureau's proposed test with an alternative test that focuses on providers that send transfers to key geographic corridors. In support, they explained that providers focusing on specific destination regions can have a large impact on particular consumer segments. Another banking industry commenter took the opposite view, arguing that using different thresholds would add too much complexity.

The Bureau agrees that using different thresholds would further complicate the rule and would make it much more difficult to administer. The Bureau is not aware of, and commenters did not identify, any existing data compilation that would provide the information necessary to establish corridor-specific thresholds.[92] Furthermore, even if data could be collected to support corridor segmentation, it would be extremely difficult and time-consuming to define all of the corridors, assess corresponding volumes, and set and maintain corridor-specific thresholds over time, as corridors could be defined in a wide variety of ways and corridor volumes could shift in response to any number of factors. While using different thresholds for different destination corridors might increase the number of larger participants that focus on specific destination regions, the Bureau's analysis and market research indicates that the threshold of one million aggregate annual international money transfers already defines a number of entities that focus on specific destination regions as larger participants. The Bureau is therefore finalizing the rule without adding any corridor-specific thresholds.

The Bureau also received comments from three consumer groups requesting that the Bureau supervise major regional or local money transmitters that dominate certain submarkets within the United States even if such transmitters do not have a nationwide presence. These commenters suggested that the Bureau could consider a company's market share (*e.g.,* revenues or volume of transactions) relative to the population density of the area of the United States in which it operates. They suggested that a money transfer company located in a highly urbanized area doing 300,000 transactions annually would not be considered a major participant in that market, but that a money transfer company in a more rural area doing the same volume of transactions could be the predominant transmitter in the community.

The challenges associated with assessing regional or local dominance in the United States are similar to those posed by setting multiple thresholds for different destination regions. In addition to volume information for market participants, the Bureau would need to gather data on each market participant's area(s) of operation and population information for each identified area. Each of these factors could change over time, making it very difficult to assess which entities would be larger participants. The Bureau believes that such an approach would be burdensome and that it is reasonable instead to identify larger participants in this market by considering the overall number of international money transfers that each international money transfer provider sends from the entire United States.[93] The Bureau is therefore adopting a single threshold of one million aggregate annual international money transfers, as proposed.

VI. Section 1022(b)(2)(A) of the Dodd-Frank Act

A. Overview

The Bureau considered potential benefits, costs, and impacts of the Final Rule.[94] The Proposed Rule set forth a

[90] According to the Bureau's estimates, the entities that would be removed from coverage if this shift were made are collectively responsible for roughly one-sixth of all international money transfers. 79 FR 5302, 5307 & n.38 (Jan. 31, 2014).

[91] As noted above, nonbank covered persons generally are subject to the Bureau's regulatory and enforcement authority and any applicable Federal consumer financial law, regardless of whether they are subject to the Bureau's supervisory authority.

[92] The Bureau noted in its proposal that it was not aware of data sources that would support regional segmentation of this nature. In addressing this issue, the large money transmitter commenters suggested that the Bureau might be able to request transactional data from individual companies and/or from State regulators, but indicated that they did not themselves have such information available.

[93] As noted above, the Bureau has other tools that it could use to address these entities, should they raise concerns, including (1) establishing supervision authority over a particular company based on a reasonable-cause determination pursuant to the Bureau's risk determination rule, 12 CFR part 1091; (2) enforcement investigations where warranted; (3) coordination with State regulators, State attorneys general, and the Federal Trade Commission; and (4) research and monitoring.

[94] Specifically, 12 U.S.C. 5512(b)(2)(A) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services, the impact on depository institutions and credit unions with $10 billion or less in total assets as described in 12 U.S.C. 5516, and the impact on consumers in rural areas. In addition, 12 U.S.C. 5512(b)(2)(B) directs the Bureau to consult, before and during the rulemaking, with appropriate prudential regulators or other Federal agencies, regarding consistency with objectives those agencies administer. The manner and extent to which the provisions of 12 U.S.C. 5512(b)(2) apply

Continued

preliminary analysis of these effects, and the Bureau requested and received comments on the topic. In addition, the Bureau has consulted with or offered to consult with the Federal Trade Commission, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, and the Securities and Exchange Commission regarding, among other things, consistency with any prudential, market, or systemic objectives administered by such agencies.

The Final Rule defines a category of nonbanks that would be subject to the Bureau's nonbank supervision program pursuant to 12 U.S. C. 5514(a)(1)(B). The category includes ''larger participants'' of a market for ''international money transfers'' described in the Final Rule. Whether an entity is a larger participant in this market will be measured on the basis of aggregate annual international money transfers. If a nonbank covered person's aggregate annual international money transfers equal or exceed one million, it will be a larger participant.

B. Potential Benefits and Costs to Consumers and Covered Persons

This analysis considers the benefits, costs, and impacts of the key provisions of the Final Rule against a baseline that includes the Bureau's existing rules defining larger participants in certain markets.[95] Many States have supervisory programs relating to money transfers, which may consider aspects of Federal consumer financial law. However, at present, there is no Federal program for supervision of nonbanks that are international money transfer providers with respect to Federal consumer financial law. The Final Rule extends the Bureau's supervisory authority over international money transfer providers that are larger participants of the international money transfer market. This includes the authority to supervise for compliance with EFTA and the Remittance Rule.

As the Bureau noted in the Proposed Rule, limited data are available with which to quantify the potential benefits, costs, and impacts of the Final Rule. For example, although the Bureau has confidential supervisory data from California, New York, and Ohio from which it can estimate the number and size of international money transfer providers, the Bureau lacks detailed or comprehensive information about their rates of compliance or noncompliance with Federal consumer financial law and about the range of, and costs of, compliance mechanisms used by market participants.

In light of these data limitations, this analysis generally provides a qualitative discussion of the benefits, costs, and impacts of the Final Rule. General economic principles, together with the limited data that are available, provide insight into these benefits, costs, and impacts. Where possible, the Bureau has made quantitative estimates based on these principles and data as well as on its experience of undertaking supervision in other markets.

The discussion below describes three categories of potential benefits and costs. First, the Final Rule authorizes the Bureau's supervision of larger participants of the international money transfer market. Larger participants of the proposed market might respond to the possibility of supervision by changing their systems and conduct, and those changes might result in costs, benefits, or other impacts. Second, if the Bureau undertakes supervisory activity at specific larger participants, those entities would incur costs from responding to supervisory activity, and the results of these individual supervisory activities might also produce benefits and costs. Third, the Bureau analyzes the costs that might be associated with entities' efforts to assess whether they qualify as larger participants under the rule.

1. Benefits and Costs of Responses to the Possibility of Supervision

The Final Rule will subject larger participants of the international money transfer market to the possibility of Bureau supervision. That the Bureau will be authorized to undertake supervisory activities with respect to a nonbank covered person that qualifies as a larger participant does not necessarily mean the Bureau will in fact undertake such activities regarding that covered person in the near future. Rather, supervision of any particular larger participant as a result of this rulemaking is probabilistic in nature. For example, the Bureau will examine certain larger participants on a periodic or occasional basis. The Bureau's decisions about supervision will be informed, as applicable, by the factors set forth in 12 U.S.C. 5514(b)(2), relating to the size and transaction volume of individual participants, the risks their consumer financial products and services pose to consumers, the extent of State consumer protection oversight, and other factors the Bureau may determine are relevant. Each entity that believes it qualifies as a larger participant will know that it may be supervised and may gauge, given its circumstances, the likelihood that the Bureau will initiate an examination or other supervisory activity.

The prospect of potential supervisory activity could create an incentive for larger participants to allocate additional resources and attention to compliance with Federal consumer financial law, potentially leading to an increase in the level of compliance. They might anticipate that by doing so (and thereby decreasing risk to consumers), they could decrease the likelihood of their actually being subject to supervisory activities as the Bureau evaluates the factors outlined above. In addition, an actual examination will be likely to reveal any past or present noncompliance, which the Bureau could seek to correct through supervisory activity or, in some cases, enforcement actions. Larger participants might therefore judge that the prospect of supervision increases the potential consequences of noncompliance with Federal consumer financial law, and they might seek to decrease that risk by taking steps to identify and cure or mitigate any noncompliance.

The Bureau believes it is likely that many market participants will increase compliance in response to the Bureau's supervisory activity authorized by the Final Rule. However, because the Final Rule itself does not require any larger participant to alter its performance of international money transfers, any estimate of the amount of increased compliance would be both an estimate of current compliance levels and a prediction of market participants' behavior in response to the Final Rule. The data that the Bureau currently has do not support a specific quantitative estimate or prediction. But, to the extent larger participants allocate resources to increasing their compliance in response to the Final Rule, that response would result in both benefits and costs.[96]

to a rulemaking of this kind that does not establish standards of conduct are unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the analysis and consultations described in those provisions of the Dodd-Frank Act.

[95] The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits and costs and an appropriate baseline. The Bureau, as a matter of discretion, has chosen to describe a broader range of potential effects to inform the rulemaking more fully.

[96] Another approach to considering the benefits, costs, and impacts of the Final Rule would be to focus almost entirely on the supervision-related costs for larger participants and omit a broader consideration of the benefits and costs of increased compliance. As noted above, the Bureau has, as a matter of discretion, chosen to describe a broader range of potential effects to inform the rulemaking more fully.

a. Benefits From Increased Compliance

Increased compliance with Federal consumer financial laws by larger participants in the international money transfer market will be beneficial to consumers who send international money transfers. The number of American consumers who could potentially be affected is significant. As noted above, data from the 2011 CPS show that more than 4 million U.S. households had used nonbanks to send money abroad to friends and family in the preceding year.[97] Increasing the rate of compliance with Federal consumer financial laws will benefit consumers and the consumer financial market by providing more of the protections mandated by those laws.

EFTA and the Remittance Rule offer substantial consumer protections for consumers sending remittance transfers. Together, EFTA and the Remittance Rule clarify the remittance process for consumers by, among other things, requiring the provision of standardized disclosures about pricing and increasing consumer protections when transfers do not go as planned. For consumers, this should increase the transparency of remittance prices and facilitate dispute resolution when errors occur.

More broadly, the Bureau will be examining for compliance with other Federal consumer financial laws, including whether larger participants of the international money transfer market engage in unfair, deceptive, or abusive acts or practices (UDAAPs).[98] Conduct that does not violate an express prohibition of another Federal consumer financial law may nonetheless constitute a UDAAP.[99] To the extent that any larger participant is currently engaged in any UDAAPs, the cessation of the unlawful act or practice would benefit consumers. Larger participants might improve policies and procedures in response to possible supervision in order to avoid engaging in UDAAPs.

The possibility of supervision also may help make incentives to comply with Federal consumer financial laws more consistent between the likely larger participants and banks and credit unions, which are already subject to Federal supervision with respect to Federal consumer financial laws. Although some nonbanks are already subject to State supervision, introducing the possibility of Federal supervision could encourage nonbanks that are likely larger participants to devote additional resources to compliance. It could also help ensure that the benefits of Federal oversight reach consumers who do not have ready access to bank- or credit union-provided international transfers. In 2011, approximately one-sixth of individuals who sent money abroad to friends and family through a nonbank did not have a bank or credit union account.[100]

b. Costs of Increased Compliance

To the extent that nonbank larger participants decide to increase resources dedicated to compliance in response to the possibility of increased supervision, the entities will bear any direct cost of any changes to their systems, protocols, or personnel. Any such increase in costs could be passed on in part to consumers. Whether and to what extent entities increase resources dedicated to compliance and/or pass those costs to consumers will depend not only on the entities' current practices and the changes they decide to make, but also on market conditions. The Bureau lacks detailed information with which to predict what portion of any cost of any increased compliance will be borne by larger participants or passed on to consumers. When or if such a cost were borne by consumers, consumers might respond by changing the frequency or amount of international money transfers sent.

In considering any potential price effect of the Final Rule, it is important to take into account the fact that nonbanks below the larger-participant threshold will not be subject to supervision as a result of this rule. In the Proposed Rule, the Bureau stated that because the costs incurred by nonbanks below the larger-participant threshold would be unaffected by the rule, their pricing should also not be affected. The Bureau stated that the competition from these smaller entities could reduce the likelihood that larger participants would choose to increase their prices in response to the rule.

One commenter disagreed, stating that (1) costs incurred by a larger participant could be passed down to a smaller provider if there is a relationship between the larger participant and the smaller provider, (2) smaller providers might increase fees to take advantage of market factors including an increase in prices charged by larger participants, and (3) other factors including compliance obligations imposed by laws and regulations other than this larger-participant rule could result in increasing prices. The commenter did not specify what it meant by a relationship between the larger and smaller provider, or how exactly costs would be passed between providers. The Bureau's market research suggests that there are hundreds of international money transfer providers that will not be subject to supervision under the Final Rule. In noting that smaller entities will not be subject to supervision as larger participants under this rule, the Bureau merely identified one factor that may make it less likely that larger participants will increase their prices. Even if some smaller entities are indirectly affected by the rule (together with larger participants), the Bureau believes that competition from unaffected smaller entities could still reduce the likelihood that any market participants would choose to increase their prices in response to the rule. To the extent other laws and regulations, or any other factors, affect prices, those are beyond the scope of this analysis under section 1022 of the Dodd-Frank Act, which is focused on the costs and benefits of this individual rule.

2. Benefits and Costs of Individual Supervisory Activities

In addition to the responses of market participants anticipating supervision, the possible consequences of the Final Rule include the responses to and effects of individual examinations or other supervisory activities that the Bureau might conduct in the international money transfer market.

a. Benefits of Supervisory Activities

Supervisory activity could provide several types of benefits. For example, as a result of supervisory activity, the Bureau and an entity might uncover deficiencies in the entity's policies and procedures. The Bureau's examination manual calls for the Bureau generally to prepare a report of each examination, to assess the strength of the entity's compliance mechanisms, and to assess the risks the entity poses to consumers, among other things. The Bureau shares examination findings with the examined entity because one purpose of supervision is to inform the entity of problems detected by examiners. Thus, for example, an examination might find evidence of widespread noncompliance with Federal consumer financial law, or it might identify specific areas where an entity has inadvertently failed to comply. These examples are only

[97] 2011 CPS Report 32, 142–43.

[98] 12 U.S.C. 5531.

[99] The CFPB Supervision and Examination Manual provides further guidance on how the UDAAP prohibition applies to supervised entities and is available at *http://www.consumerfinance.gov/guidance/supervision/manual.*

[100] Bureau estimate based on 2011 CPS data, which are available at *http://thedataweb.rm.census.gov/ftp/cps_ftp.html* and described at *http://www.census.gov/prod/techdoc/cps/cpsjun11.pdf.*

illustrative of the kinds of information an examination might uncover.

Detecting and informing entities about such problems should be beneficial to consumers. When the Bureau notifies an entity about risks associated with an aspect of its activities, the entity is expected to adjust its practices to reduce those risks. That response may result in increased compliance with Federal consumer financial law, with benefits like those described above. Or it may avert a violation that would have occurred had Bureau supervision not detected the risk promptly. The Bureau may also inform entities about risks posed to consumers that fall short of violating the law. Action to reduce those risks would also be a benefit to consumers.

Given the obligations international money transfer providers have under Federal consumer financial law and the existence of efforts to enforce such law, the results of supervision also may benefit larger participants by detecting compliance problems early. When an entity's noncompliance results in litigation or an enforcement action, the entity must face both the costs of defending its actions and the penalties for noncompliance, including potential liability for damages to private plaintiffs. The entity must also adjust its systems to ensure future compliance. Changing practices that have been in place for long periods of time can be expected to be relatively difficult because the practices may be severe enough to represent a serious failing of an entity's systems. Supervision may detect flaws at a point when correcting them would be relatively inexpensive. Catching problems early can, in some situations, forestall costly litigation. To the extent early correction limits the amount of consumer harm caused by a violation, it can help limit the cost of redress. In short, supervision might benefit larger participants by, in the aggregate, reducing the need for other more expensive activities to achieve compliance.[101]

b. Costs of Supervisory Activities

The potential costs of actual supervisory activities arise in two categories. The first involves any costs to individual larger participants of increasing compliance in response to the Bureau's findings during supervisory activity and to supervisory actions. These costs are similar in nature to the possible compliance costs, described above, that larger participants in general might incur in anticipation of possible supervisory actions. This analysis will not repeat that discussion. The second category is the cost of supporting supervisory activity.

Supervisory activity may involve requests for information or records, on-site or off-site examinations, or some combination of these activities. For example, in an on-site examination, Bureau examiners generally contact the entity for an initial conference with management. That initial contact is often accompanied by a request for information or records. Based on the discussion with management and an initial review of the information received, examiners determine the scope of the on-site exam. While on-site, examiners spend some time in further conversation with management about the entity's policies, procedures, and processes. The examiners also review documents, records, and accounts to assess the entity's compliance and evaluate the entity's compliance management system. As with the Bureau's other examinations, examinations of nonbank larger participants in the international money transfer market could involve issuing confidential examination reports and compliance ratings. The Bureau's examination manual describes the supervision process and indicates what materials and information an entity could expect examiners to request and review, both before they arrive and during their time on-site.

The primary cost an entity will face in connection with an examination is the cost of employees' time to collect and provide the necessary information. The frequency and duration of examinations of any particular entity would depend on a number of factors, including the size of the entity, the compliance or other risks identified, whether the entity has been examined previously, and the demands on the Bureau's supervisory resources imposed by other entities and markets. Nevertheless, some rough estimates may be useful to provide a sense of the magnitude of potential staff costs that entities might incur.

The cost of supporting supervisory activity may be calibrated using prior Bureau experience in supervision. The Bureau considers its nonbank payday lender examinations as a reasonable proxy for the duration and labor intensity of future international money transfer provider examinations. Although there are many differences, the nonbank payday lending market is more like the nonbank market for international money transfers than other nonbank markets the Bureau currently supervises because both markets involve point-of-sale transactions involving similar dollar amounts.

The average duration of the on-site portion of Bureau nonbank payday exams is approximately 8 weeks.[102] Assuming that each exam requires 2 weeks of preparation time by international money transfer provider staff prior to the exam as well as on-site assistance by staff throughout the duration of the exam, the Bureau assumes that the typical examination in this nonbank market would require 10 weeks of staff time. The Bureau has not suggested that counsel or any particular staffing level is required during an examination. However, for purposes of this analysis, the Bureau assumes, conservatively, that an entity might dedicate the equivalent of one full-time compliance officer and one-tenth of a full-time attorney to the exam. The average hourly wage of a compliance officer in a nonbank entity that operates in activities related to credit intermediation is $30.66, and the average hourly wage of a lawyer in the same industry is $80.95.[103] Assuming that wages account for 67.5 percent of total compensation,[104] the total labor cost of an examination would be about

[101] Further potential benefits to consumers, covered persons, or both might arise from the Bureau's gathering of information during supervisory activities. The goals of supervision include informing the Bureau about activities of market participants and assessing risks to consumers and to markets for consumer financial products and services. The Bureau may use this information to improve regulation of consumer financial products and services and to improve enforcement of Federal consumer financial law, in order to better serve its mission of ensuring consumers' access to fair, transparent, and competitive markets for such products and services. Benefits of this type will depend on what the Bureau learns during supervision and how it uses that knowledge. For example, because the Bureau will examine a number of covered persons in the international money transfer market, the Bureau will build an understanding of how effective compliance systems and processes function in that market.

[102] This estimate was derived using confidential supervisory Bureau data on the duration of on-site payday loan examinations at nonbanks. For purposes of this calculation, the Bureau counted its payday loan examinations for which the on-site portion had been completed. The Bureau counted only the on-site portion of an examination, which included time during the on-site period of the examination that examiners spent while off-site for travel or holidays. However, the Bureau did not count time spent scoping an examination before the on-site portion of the examination or summarizing findings or preparing reports of examination afterwards.

[103] Bureau of Labor Statistics Occupational Employment Statistics (OES) Survey, May 2013 estimates for NAICS code 522300, *available at http://www.bls.gov/oes/current/naics4_522300.htm.*

[104] Bureau of Labor Statistics series CMU2025220000000D, Quarter 2 2013, *available at http://data.bls.gov/timeseries/CMU2025220000000D?data_tool=XGtable.*

$23,000.[105] The Bureau estimates that the cost for an entity that sends 1 million transfers per year, with an average transfer amount of $200, would be approximately 0.18 percent of total revenue from such transfers for that year.[106] Note that this is a conservative estimate in several respects because it reflects revenue only from this line of business and uses a relatively small average international money transfer size as well as the minimum number of transactions that a larger participant would provide.[107]

One banking industry association commenter stated that it suspects that this estimate grossly understates the time and effort that a covered entity will need to prepare for an examination. That commenter identified the employee time needed to provide data and information to examiners, as well as the time needed to support the Bureau's examination teams, as sources of costs. The commenter did not offer an alternative estimate on the amount of staff time an examination would require. Based on its experience with similar exams, the Bureau has estimated the total cost for international money transfer providers, including the staff time necessary to prepare for an examination as well as the staff time necessary to support the Bureau's examination team once examiners arrive on site. Depending on the circumstances, the amount may be an underestimate or overestimate for some supervisory activities. But even if an examination required twice as much compliance officer time as the Bureau estimated, based on the assumptions mentioned above, the cost would still only be approximately 0.3 percent of annual revenue from one million transfers.

The overall costs of supervision in the international money transfer market will depend on the frequency and extent of Bureau examinations. Industry commenters suggested that it would be helpful if the Bureau provided some expectations or guidance as to frequency and timing of examinations and recommended that no covered institution be examined more frequently than once every two years.[108] Neither the Dodd-Frank Act nor the Final Rule specifies a particular level or frequency of examinations.[109] The frequency of examinations will depend on a number of factors, including the Bureau's understanding of the conduct of market participants and the specific risks they pose to consumers; the responses of larger participants to prior examinations; and the demands that other markets make on the Bureau's supervisory resources. These factors can be expected to change over time, and the Bureau's understanding of these factors may change as it gathers more information about the market through its supervision and by other means. The Bureau therefore declines to predict, at this point, precisely how many examinations in the international money transfer market it will undertake in a given year or how often it will examine any particular entity.

3. Costs of Assessing Larger-Participant Status

The Final Rule does not require nonbanks to assess whether they are larger participants. However, the Bureau acknowledges that in some cases international money transfer providers might decide to incur costs to assess whether they qualify as larger participants or potentially dispute their status.

One banking industry commenter stated that the Bureau's proposed analysis of costs did not include costs for determining whether an entity is a larger participant under the rule. This commenter stated that nonbanks will be likely to make this determination because it will be an important element of the nonbank's strategic plan and budget. In the proposal, the Bureau acknowledged that some nonbanks may choose to incur the cost of assessing whether they are larger participants even though the rule does not require them to do so. The Bureau discussed this cost qualitatively rather than quantitatively, because the data that the Bureau had did not support a detailed estimate of how many international money transfer providers would choose to incur this cost or how much they would spend. The commenter did not provide any additional data that the Bureau could use for a quantitative analysis, and the Bureau has not acquired additional data from other sources. Therefore, in this final analysis as in the proposed analysis, the Bureau has chosen to address this possible cost qualitatively. No commenters objected to the other elements of the qualitative analysis presented in the Proposed Rule, and repeated below, including the Bureau's assumption that international money transfer providers are unlikely to incur substantially greater costs to determine their larger-participant status than they expect to incur from Bureau supervision.

Larger-participant status depends on a nonbank's aggregate annual international money transfers. As noted above, the Bureau expects that many market participants already assemble general data related to the number of international transactions that they provide for internal business purposes. Moreover, many providers are required to report transaction data to State regulators. Further, the definition of the criterion in this rule roughly tracks the definition of ''remittance transfer'' used in the Remittance Rule, and the Bureau expects that some market participants may choose to track the number of remittance transfers they provide each year. These preexisting activities could assist entities in estimating whether they are larger participants.

To the extent that some international money transfer providers do not already know whether their transactions exceed the threshold, such nonbanks might, in

[105] Assuming that individuals are compensated for 40 hour work weeks, this is calculated as follows: [(0.1*80.95+30.66)/0.675]*40*10.

[106] This assumption is based on research on remittances suggesting that the average price of sending money abroad from the United States is roughly 6.42 percent of the total amount sent. World Bank, Remittance Prices Worldwide, An Analysis of Trends in the Average Total Cost of Migrant Remittance Services (Sept. 2013), 11 (percentage is average price of $200 transfers in Q3 2013), *available at https://remittanceprices.worldbank.org/sites/default/files/RPW_Report_Sep2013.pdf.* The Bureau measured proportion of revenues using the following equation: Proportion of revenues={[(0.1*80.95+30.66)/0.675]*40*10}/{1,000,000*200*0.0642}.

[107] A $200 average transfer size is a conservative estimate. Review of the *CA Extrapolation* figures ($49 billion total market dollar volume and 152 million total market transfers) suggests that the average transaction size is just over $300. For entities reporting to California, New York, and Ohio that sent over 500,000 transfers, the *Analysis of State Supervisory Data* suggests that the average transfer size is about $300. Using a $300 average transfer size, the cost of supervision would be approximately 0.12 percent of total revenues for an entity that sends 1 million transfers per year. Other sources from 2005 and 2008 also suggest a higher average transfer size. Ole E. Andreassen, Remittance Service Providers in the United States: How Remittance Firms Operate and How They Perceive Their Business Environment 15–16 (June 2006), *available at http://siteresources.worldbank.org/INTPAYMENTREMMITTANCE/Resources/BusinessmodelsFSEseries.pdf* ($550); Bendixen & Amandi, Survey of Latin American Immigrants in the United States 23 (Apr. 30, 2008), *available at idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=35063818* ($325).

[108] Industry commenters also requested guidance as to scope of examinations. As noted above, the Bureau typically determines the scope of each examination based on initial review of the information received and discussions with management.

[109] The Bureau declines to predict at this time precisely how many examinations it would undertake at each larger participant. However, if the Bureau were to examine each larger participant of the international money transfer market once every two years, the expected annual labor cost of supervision per larger participant would be approximately $11,500 (the cost of one examination, divided by two). This would account for 0.09 percent of the international money transfer revenue of an entity that sends one million transfers in a year, assuming an average transaction amount of $200.

response to the Final Rule, develop new systems to count their transactions in accordance with the definition of ''international money transfer.'' The data that the Bureau currently has do not support a detailed estimate of how many international money transfer providers will engage in such development or how much they would spend. Regardless, international money transfer providers are unlikely to spend significantly more on specialized systems to count transactions than their expected cost of being supervised by the Bureau as larger participants. It bears emphasizing that even if expenditures on a counting system successfully proved that an international money transfer provider was not a larger participant, it would not necessarily follow that the entity could not be supervised. The Bureau can supervise specific international money transfer providers whose conduct the Bureau determines, pursuant to 12 U.S.C. 5514(a)(1)(C), poses risks to consumers. Thus, an international money transfer provider choosing to spend significant amounts on an accounting system directed toward the larger-participant test could not be sure it would not be subject to Bureau supervision notwithstanding those expenses. The Bureau therefore believes very few if any international money transfer providers would undertake such expenditures.

4. Consideration of Alternatives

The Bureau considered two major alternatives: Using a measure other than number of international money transfers to define the market and choosing a different threshold to define larger participants.

First, the Bureau considered various other criteria for assessing larger-participant status, including annual receipts from international money transfers and annual transmitted dollar volume. Calculating either of those metrics could be more involved than calculating the number of international money transfers. If so, a given nonbank might face greater costs for evaluating or disputing whether it qualified as a larger participant should the occasion to do so arise. The Bureau expects that for both annual receipts and annual transmitted dollar volume it could choose a suitable threshold for which the number of larger participants, among those nonbanks participating in the market today, would be the same as the number of nonbanks expected to qualify under the Final Rule. Consequently, the costs, benefits, and impacts of supervisory activities should not depend on which criterion the Bureau uses.

The second possible alternative the Bureau considered is selecting a different threshold. One alternative would be to set the threshold substantially higher—for example at three million aggregate annual international money transfers as two commenters suggested—and cover only the very largest nonbanks in the market. Under such an alternative, the benefits of supervision to both consumers and covered persons would likely be reduced because entities impacting a substantial number of consumers and/or consumers in particular market segments might be omitted. Conversely, lowering the threshold as other commenters suggested would subject more entities to the Bureau's supervisory authority. Raising or lowering the threshold could decrease or increase, respectively, some potential costs to covered persons if fewer or more entities were defined as larger participants and thus were subject to the Bureau's supervisory authority on that basis. However, the total direct costs for actual supervisory activity might not change substantially because the Bureau conducts exams on a risk basis and would not necessarily examine more or fewer entities if the rule's coverage were broader or narrower.[110]

C. Potential Specific Impacts of the Final Rule

1. Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in Dodd-Frank Act Section 1026

The Final Rule does not apply to depository institutions or credit unions of any size. However, it might have some impact on depository institutions or credit unions that provide international transfers. For example, if the relative price of nonbanks' international money transfers were to increase due to increased costs related to supervision, then depository institutions or credit unions of any size might benefit by the relative change in costs. The Bureau believes these effects, if any, would likely be small.

2. Impact of the Provisions on Consumers in Rural Areas

Because the Final Rule applies uniformly to international money transfers of both rural and non-rural consumers, the rule should not have a unique impact on rural consumers. The Bureau did not receive and is not aware of any evidence suggesting that rural consumers have been disproportionately harmed by international money transfer providers' failure to comply with Federal consumer financial law.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.[111] The RFA defines a ''small business'' as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.[112]

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) of any proposed rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.[113] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small entity representatives prior to proposing a rule for which an IRFA is required.[114]

The undersigned certified that the Proposed Rule, if adopted, would not have a significant economic impact on

[110] Another alternative under consideration is setting different thresholds for each global region in which transfers are received. As alluded to earlier, international money transfer submarkets tend to be segmented by corridor: Individuals wishing to send remittances to El Salvador, for example, cannot easily substitute transfers to Moldova. The Bureau could define a larger-participant threshold for different geographic regions so that the entities that provide the most transfers to a given region could be supervised. Given the paucity of data on region-specific transactions, however, any definition of these thresholds might be more difficult to establish and to administer over time. The Bureau also considered a similar suggestion by commenters that the Bureau consider a company's market share relative to the population density of the area of the United States in which it operates. The Bureau declined to use this approach, again due to concerns about data availability and ease of administration over time.

[111] 5 U.S.C. 601 *et seq.* The term ''small organization' means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes [an alternative definition after notice and comment].'' *Id.* at 601(4). The term ''small governmental jurisdiction' means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes [an alternative definition after notice and comment].'' *Id.* at 601(5). The Bureau is not aware of any small governmental units or small not-for-profit organizations to which the Final Rule will apply.

[112] 5 U.S.C. 601(3). The Bureau may establish an alternative definition after consultation with SBA and an opportunity for public comment.

[113] 5 U.S.C. 605(b).

[114] 5 U.S.C. 609.

a substantial number of small entities and that an IRFA was therefore not required. The Bureau did not receive any comments objecting to the Bureau's certification. The Final Rule adopts the Proposed Rule, with some modifications that do not lead to a different conclusion. Therefore, a final regulatory flexibility analysis is not required.

The Final Rule defines a class of international money transfer providers as larger participants of the international money transfer market and thereby authorizes the Bureau to undertake supervisory activities with respect to those nonbanks. The rule adopts a threshold for larger-participant status of one million aggregate annual international money transfers. Under what the Bureau believes was the most relevant SBA size standard at the time the Proposed Rule was issued, an international money transfer provider qualified as a small business only if its annual receipts were below $19 million.[115] Of the approximately 25 potential larger participants identified by the Bureau among the California, New York, and Ohio licensees, the Bureau estimated there were approximately 10 providers with annual receipts under $19 million.[116] Since the Proposed Rule was issued, the SBA increased this size standard from $19 million to $20.5 million, but this adjustment would not change the Bureau's estimate of the number of potential larger participants that qualify as small businesses.[117]

According to the 2007 Economic Census, there are more than 5,000 small firms in the North American Industry Classification System (NAICS) industry the Bureau believes is applicable to most international money transfer providers.[118] Therefore, according to the Bureau's analysis, this rule impacts less than one percent of the small businesses in the industry.[119] For these reasons, the Final Rule will not have a significant impact on a substantial number of small entities.[120]

Additionally, and in any event, the Bureau believes that the Final Rule will not result in a ''significant impact'' on any small entities that could be affected. The rule does not itself impose any business conduct obligations. As previously noted, when and how often the Bureau would in fact engage in supervisory activity, such as an examination, with respect to a larger participant (and, if so, the extent of such activity) will depend on a number of considerations, including the Bureau's allocation of resources and the application of the statutory factors set forth in 12 U.S.C. 5514(b)(2). Given the Bureau's finite supervisory resources, and the range of industries over which it has supervisory responsibility for consumer financial protection, when and how often a given larger participant will be supervised is uncertain. Moreover, when supervisory activity occurred, the costs that result from such activity are expected to be minimal in relation to the overall activities of a larger participant.[121]

Finally, 12 U.S.C. 5514(e) authorizes the Bureau to supervise service providers to nonbank covered persons encompassed by 12 U.S.C. 5514(a)(1), which includes larger participants. Because the Final Rule does not address service providers, effects on service providers need not be discussed for purposes of this RFA analysis. Even were such effects relevant, the Bureau believes that it would be very unlikely that any supervisory activities with respect to the service providers to the approximately 25 larger participants of the nonbank market for international money transfers would result in a significant economic impact on a substantial number of small entities.[122]

Accordingly, the Bureau adheres to the certification, in the Proposed Rule, that the Final Rule will not have a significant economic impact on a substantial number of small entities.

VIII. Paperwork Reduction Act

The Bureau determined that the Proposed Rule would not impose any new recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that

[115] 78 FR 37409, 37416 (June 20, 2013) (NAICS code 522390), *later amended by* 79 FR 33647 (June 12, 2014). The Bureau believes that larger participants in the proposed international money transfer market are likely to be classified in North American Industry Classification System (NAICS) code 522390, ''Other Activities Related to Credit Intermediation.'' NAICS lists ''[m]oney transmission services'' as an index entry corresponding to this code. *See http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=522390&search=2012* NAICS Search. The Bureau requested comment on whether this or any other NAICS code is most appropriate for this market and did not receive any comments. The Bureau is aware that a nonbank larger participant of the proposed international money transfer market might be classified in a NAICS code other than the one that includes money transmission services. For example, some larger participants may be classified under NAICS code 522320 for financial transactions processing, reserve, and clearing house activities. NAICS lists ''[e]lectronic funds transfer services'' as an index entry corresponding to code 522320. *See http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=522320&search=2012.*

[116] 79 FR 5302, 5316 n.93 (Jan. 31, 2014).

[117] The SBA issued an Interim Final Rule increasing many of its small business standards to account for inflation, which became effective on July 14, 2014. 79 FR 33647 (June 12, 2014). The size standard for NAICS code 522390 increased from $19 million to $20.5 million. This does not, however, affect the Bureau's analysis because according to the Bureau's estimates, the same number of potential larger participants have under $20.5 million as have under $19 million in annual receipts. Likewise, even if the relevant NAICS code were instead 522320, the same number of potential larger participants would qualify under that code's new size standard of $38.5 million as under the prior standard of $35.5 million that the Bureau considered in the proposal.

[118] U.S. Census Bureau, 2007 Economic Census, American FactFinder, Finance and Insurance: Subject Series—Estab. and Firm Size: Summary Statistics by Revenue Size of Firms for the United States, *available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_52SSSZ4&prodType=table* (NAICS code 522390).

[119] 79 FR 5302, 5316 n.95 (Jan. 31, 2014).

[120] Because the Bureau has not assessed the affiliations of potential larger participants, the Bureau's estimate of small entity larger participants may include some larger participants that are not in fact small entities due to the receipts of their affiliates, which are counted towards an entity's annual receipts for purposes of assessing whether an entity is a small business concern under the SBA's definition. 13 CFR 121.104(d). Conversely, it is possible there are additional small firms that have less than one million annual international money transfers on their own, but that would meet the proposed threshold of one million aggregate annual international money transfers when their transfers are aggregated with their affiliated companies' transfers. However, the Bureau anticipates no more than a very few such cases, if any, in the international money transfer market.

[121] As discussed above, the Bureau estimates that the cost of participating in an examination would be approximately 0.18 percent of annual revenue from international money transfers for an entity at the threshold of 1 million aggregate annual international money transfers. If an examination required double the compliance officer time estimated by the Bureau, the Bureau's estimates suggest that it would still only require about 0.3 percent of annual revenue from international money transfers for an entity at the threshold of 1 million aggregate annual international money transfers.

[122] The Bureau is aware that there are likely thousands of service providers to larger participants of the international money transfer market. Many of these service providers might be considered to be in the industry with NAICS code 522390 for other activities related to credit intermediation. As discussed above, according to the 2007 Economics Census, there are more than 5,000 small firms in the industry. Other service providers may be classified in NAICS code 522320 for financial transactions processing, reserve, and clearing house activities, which includes at least 1,800 small firms. Still other service providers, including many retail agents, are likely to be considered in other NAICS codes corresponding to the service provider's primary business activities. As noted above with respect to larger participants themselves, the frequency and duration of examinations that would be conducted at any particular service provider would depend on a variety of factors. However, it is implausible that in any given year the Bureau would conduct examinations of a substantial number of the more than 5,000 small firms in NAICS code 522390, the more than 1,800 small firms in NAICS code 522320, or the small firm service providers that happen to be in any other NAICS code. Moreover, the impact of supervisory activities, including examinations, at such small firm service providers can be expected to be less, given the Bureau's exercise of its discretion in supervision, than at the larger participants themselves.

would constitute collections of information requiring approval under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The Bureau did not receive any comments regarding this conclusion, to which the Bureau adheres. The Bureau concludes that the Final Rule, which adopts the Proposed Rule in relevant respects, also imposes no new information collection requirements subject to the Paperwork Reduction Act.

List of Subjects in 12 CFR Part 1090

Consumer protection, Credit.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau amends 12 CFR part 1090, subpart B, as follows:

PART 1090—DEFINING LARGER PARTICIPANTS OF CERTAIN CONSUMER FINANCIAL PRODUCT AND SERVICE MARKETS

■ 1. The authority citation for part 1090 continues to read as follows:

Authority: 12 U.S.C. 5514(a)(1)(B); 12 U.S.C. 5514(a)(2); 12 U.S.C. 5514(b)(7)(A); and 12 U.S.C. 5512(b)(1).

■ 2. Add § 1090.107 to subpart B to read as follows:

§ 1090.107 International Money Transfer Market.

(a) *Market-related definitions.* As used in this subpart:

Aggregate annual international money transfers means the sum of the annual international money transfers of a nonbank covered person and the annual international money transfers of each of the nonbank covered person's affiliated companies.

(i) *Annual international money transfers.* Annual international money transfers of a nonbank covered person means the international money transfers provided by the nonbank covered person during the preceding calendar year.

(ii) *Agents.* (A) Annual international money transfers of a nonbank covered person include international money transfers in which another person acts as an agent on behalf of the nonbank covered person.

(B) Annual international money transfers of a nonbank covered person do not include international money transfers in which another person provided the international money transfers and the nonbank covered person performed activities as an agent on behalf of that other person.

(C) For purposes of this paragraph (ii), agent means an agent or authorized delegate, as defined under State or other applicable law, or affiliated company of a person that provides international money transfers when such agent, authorized delegate, or affiliated company acts for that person.

(iii) *Aggregating the annual international money transfers of affiliated companies.* (A) The annual international money transfers of each affiliated company of a nonbank covered person are calculated separately in accordance with paragraphs (i) and (ii) of this definition, treating the affiliated company as if it were an independent nonbank covered person for purposes of the calculation.

(B) The annual international money transfers of a nonbank covered person must be aggregated with the annual international money transfers of any person that was an affiliated company of the nonbank covered person at any time during the preceding calendar year. The annual international money transfers of the nonbank covered person and its affiliated companies are aggregated for the entire preceding calendar year, even if the affiliation did not exist for the entire calendar year.

Designated recipient means any person specified by the sender as the authorized recipient of an international money transfer to be received at a location in a foreign country.

International money transfer means the electronic transfer of funds requested by a sender to a designated recipient that is sent by an international money transfer provider. The term applies regardless of whether the sender holds an account with the international money transfer provider, and regardless of whether the transaction is also an electronic fund transfer, as defined in § 1005.3(b) of this chapter. The term does not include any transfer that is excluded from the definition of ''electronic fund transfer'' under § 1005.3(c)(4) of this chapter.

International money transfer provider means any nonbank covered person that provides international money transfers for a consumer, regardless of whether the consumer holds an account with such person.

Sender means a consumer in a State who primarily for personal, family, or household purposes requests an international money transfer provider to send an international money transfer to a designated recipient.

State means any State, territory, or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; or any political subdivision thereof.

(b) *Test to define larger participants.* A nonbank covered person is a larger participant of the international money transfer market if the nonbank covered person has at least one million aggregate annual international money transfers.

Dated: September 9, 2014.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2014–22310 Filed 9–22–14; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2014–0294; Airspace Docket No. 14–ACE–2]

Amendment of Class D Airspace; Wichita, McConnell AFB, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace at Wichita, McConnell AFB, KS. The closure of nearby Derby, Hamilton Field has necessitated the need to amend Class D airspace at McConnell AFB. This action enhances the safety and management of aircraft operations at the airport.

DATES: Effective date: 0901 UTC, November 13, 2014. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Y, Airspace Designations and Reporting Points and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15. For further information, you can contact the Airspace Policy and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783.

FOR FURTHER INFORMATION CONTACT: Raul Garza, Jr., Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort

Worth, TX 76137; telephone 817–321–7654.

SUPPLEMENTARY INFORMATION:

History

On May 27, 2014, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify Class D airspace at McConnell AFB, Wichita, KS, (79 FR 30054) Docket No. FAA–2014–0294. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9Y dated August 6, 2014, and effective September 15, 2014, which is incorporated by reference in 14 CFR.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class D airspace by removing the segment of controlled airspace once reserved for use at Derby, Hamilton Field, and reverting the airspace to McConnell AFB, Wichita, KS. This action is needed for the safety and management of IFR operations at the airport due to the closure of Derby, Hamilton Field. Except for editorial changes, this rule is the same as published in the NPRM.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at McConnell AFB, Wichita, KS.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014, and effective September 15, 2014, is amended as follows:

Paragraph 5000: Class D Airspace

* * * * *

ACE KS D Wichita, McConnell AFB, KS [Amended]

Wichita McConnell AFB, KS
(lat. 37°37′23″ N., long. 97°16′03″ W.)

That airspace extending upward from the surface to and including 3,900 feet MSL within a 4.5-mile radius of McConnell Air Force Base, excluding that airspace within the Wichita Mid-Continent Airport, KS, Class C airspace area.

Issued in Fort Worth, Texas, on September 10, 2014.

Robert Beck,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2014–22508 Filed 9–22–14; 8:45 am]

BILLING CODE 4910–14–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0386]

RIN 1625–AA09

Drawbridge Operation Regulation; Taylor Bayou Outfall Canal (Joint Outfall Canal), TX

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is implementing an operating schedule that governs the Valero pontoon-supported swing bridge across Taylor Bayou Outfall Canal (Joint Outfall Canal (JOC)), mile 2.44, West Port Arthur, Jefferson County, Texas. This bridge provides for Valero's maintenance vehicles to cross the waterway. The regulation will allow the bridge to remain in the open-to-navigation position except during two scheduled daily closures. This regulation increases the efficiency of operations allowing for the safe navigation of vessels through the bridge while recognizing the bridge's importance to the facility that it serves.

DATES: This interim rule is effective October 23, 2014.

Comments and related material must reach the Coast Guard on or before November 15, 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. James Wetherington; Bridge Administration Branch, Eighth Coast Guard District; telephone 504–671–

2128, email *james.r.wetherington@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl F. Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR Code of Federal Regulations
DHS Department of Homeland Security
USCG United States Coast Guard
NEPA National Environmental Policy Act
NPRM Notice of Proposed Rule Making
§ Section Symbol
U.S.C. United States Code
JOC Joint Outfall Canal

A. Public Participation and Request for Comments

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

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2014–0386), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand 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 phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number (USCG–2014–0386) in the ''SEARCH'' box and click ''SEARCH.'' Then 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–2014–0386) 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 to the docket using one of the four methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

The Coast Guard is issuing this interim final rule without prior notice 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 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 completing the full notice of proposed rulemaking (NPRM) process with respect to this rule. This bridge is replacing a previously demolished temporary removable-span bridge located approximately 200 yards upstream. The temporary bridge was a removable-span bridge that remained in place during the day and was removed with a crane when passage was required. This process took a minimum of 10 minutes. While in the closed position, the bridge had a vertical clearance of five feet and a horizontal clearance of 35 feet. At night, the removable span was completely removed allowing a clear channel of 35 feet for the passage of vessels with an unlimited vertical clearance. In preparation for the new bridge, the bridge owner coordinated with waterway users and local facilities and agencies to develop an operating schedule. Based upon this coordination, the bridge owner requested a special operating regulation for this bridge to best serve the maritime and land users as well as local authorities that have an interest in this waterway. As a result, the new bridge will remain in the open-to-navigation position at all times except during two daily scheduled closures. These closures allow for access to Valero's property for required scheduled maintenance and testing. Notice of each closure will include sound signals and two broadcasts—the first at one hour before closure and the second at 10 minutes before closure.

Because of the efforts of the bridge owner to coordinate this schedule with those using the bridge and waterway, it would be impracticable to complete the full NPRM process, delaying the effective date for this rule and the coordinated operating schedule. Additionally, this rule allows the bridge owner use of the bridge while accommodating the waterway users more efficiently without the need for a full-time tender. There is also opportunity to comment on this interim rule before its effective date and during the first few weeks that the operating schedule is in effect. This comment period allows for comments on how the new schedule is working before making the rule final. Finally, because this operating schedule has been coordinated with waterway users in the area, no adverse comments are anticipated. The bridge is expected to be complete and fully operational by late October, 2014.

C. Basis and Purpose

The Coast Guard received a request from the Premcor Refining Group, Inc.—A Valero Company to create a special operating schedule for the new Valero pontoon-supported swing bridge across Taylor Bayou Outfall Canal (JOC), mile 2.44, West Port Arthur, Jefferson County, Texas. Per 33 CFR 117.41(b), the bridge owner would like to allow

the bridge to remain open except for two scheduled daily closures.

This change will allow the bridge owner to leave the bridge in the open-to-navigation position while removing the requirement that a bridge tender be on the bridge at all times. Notices for each closure will include sound signals and two broadcasts—the first at one hour before closure and the second at 10 minutes before closure. The bridge is a pontoon-supported swing bridge that will remain in the open-to-navigation position except during two daily maintenance cycles. The bridge will have unlimited vertical clearance in the open-to-navigation position and a vertical clearance of 11.11 feet in the closed-to-navigation position. The new bridge will have a horizontal clearance of 75.0 feet from fender to fender in the open-to-navigation position and 52 feet from pontoon to fender in the closed-to-navigation position.

The purpose of the bridge is to allow Valero access to its property for daily operations and maintenance. The bridge will only be in the closed-to-navigation position during daily scheduled maintenance times unless there is an emergency that requires access to the other side of the waterway. The one-hour closure request includes two 15-minute bridge cycling periods with a 30-minute allowance for maintenance work. It would be impracticable to open the bridge during the 30-minute maintenance period as it requires 30 minutes to fully cycle the bridge.

Traffic on this waterway is primarily recreational craft and commercial barges. Valero engaged the owners of these vessels through multiple discussions leading to the design and operating schedule of this bridge.

D. Discussion of Interim Rule

This interim rule allows the bridge to be unmanned and maintained in the fully-open-for-navigation position at all times, with the exception of two one-hour closures each day. These scheduled bridge closures will occur from 6:30 a.m. to 7:30 a.m. and from 5:30 p.m. to 6:30 p.m. Notices for each closure will include sound signals and two broadcasts—the first at one hour before closure and the second at 10 minutes before closure. Additionally, the bridge can be opened in 30 minutes if there is an emergency on the waterway during the scheduled closure times. Any other emergencies that require vehicular access to the other side of the waterway outside of the normal operating schedule require notice to the Coast Guard and broadcasts by the bridge owner stating the bridge is to be closed due to an emergency. Additionally, visual verification that the waterway is clear prior to the operation of the bridge is required.

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 or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This rule allows the bridge to remain in the open-to-navigation position at all times with the exception of two scheduled closures each day to allow for vehicular traffic. Because the bridge will be left in the open position and only closed to vessel traffic for two hours per day, one hour in the morning and one hour in the early evening, this regulation will have a minimal effect on the waterway users and vessels transiting the area. Additionally, the bridge can be opened in 30 minutes should there be emergency need during one of the scheduled closures.

2. Impact on Small Entities

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

This rule will affect the following entities, some of which may be small entities: the property owners, vessel operators and waterway users who wish to transit on Taylor Bayou Outfall Canal (JOC) past mile 2.44 from 6:30 a.m. to 7:30 a.m. and from 5:30 p.m. to 6:30 p.m. daily. This rule will not have a significant impact on a substantial number of small entities for the following reasons because, through pre-coordination and consultation with property owners, vessel operators and waterway users, this operating schedule will accommodate all waterway users with minimal impact.

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a

State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might 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 guides 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 which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 117.988 to read as follows:

§ 117.988 Taylor Bayou Outfall Canal (Joint Outfall Canal (JOC)).

The draw of the Valero Bridge, mile 2.44, at the Valero facility in West Port Arthur, shall operate as follows:

(a) The draw shall be unmanned and maintained in the fully open-to-navigation position, except 6:30 a.m. through 7:30 a.m. and 5:30 p.m. through 6:30 p.m. daily.

(b) One hour prior to closing, a broadcast will be made warning of the impending closure on VHF–FM channels 16 and 13.

(c) 10 minutes prior to closing, the broadcast will be repeated warning of the impending closure on VHF–FM channels 16 and 13.

(d) The crewmember/tender will monitor the portable marine radio on approach to the bridge. When work crew approaches the bridge, it will stop and the crewmember/tender will observe the waterway for approaching vessels. If vessels are observed approaching the bridge, they will be allowed to pass prior to closing the bridge.

(e) An audible alarm will be heard during the opening and closing sequences of the bridge.

(f) Emergency marine traffic will be allowed to pass upon request. The bridge will require up to 30 minutes to cycle to allow for the passage of vessels. This request can be made on VHF–FM channel 16.

Dated: September 2, 2014.

Kevin S. Cook,

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

[FR Doc. 2014–22590 Filed 9–22–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0761]

Drawbridge Operation Regulation; Middle River, Between Bacon Island and Lower Jones Tract, CA

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 Bacon Island Road Drawbridge across Middle River, mile 8.6, between Bacon Island and Lower Jones Tract, CA. The deviation is necessary to allow the bridge owner to perform structural maintenance work to the bridge. This deviation allows the bridge to remain in the closed-to-navigation position during the deviation period.

DATES: This deviation is effective without actual notice from September 23, 2014 through 5 p.m. on October 23, 2014. For the purposes of enforcement, actual notice will be used from 9 a.m. on September 8, 2014, until September 23, 2014.

ADDRESSES: The docket for this deviation, [USCG–2014–0761], 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 David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email *David.H.Sulouff@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: San Joaquin County Department of Public Works has requested a temporary change to the operation of the Bacon Island Road Drawbridge, mile 8.6, over Middle River, between Bacon Island and Lower Jones Tract, CA. The drawbridge navigation span provides approximately 8 feet vertical clearance above Mean High Water in the closed-to-navigation position. In accordance with 33 CFR 117.171(a), the draw opens on signal from May 15 through September 15 from 9 a.m. to 5 p.m. From September 16 through May 14, the draw opens on signal from 9 a.m. to 5 p.m. from Thursday through Monday. At all other times, the draw shall open on signal if at least 12 hours notice is given to the San Joaquin County Department of Public Works at Stockton. Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position from 9 a.m. on September 8, 2014 to 5 p.m. on October 23, 2014, due to structural maintenance work in replacing the approach deck slabs. The work will require loss of power to the bridge electrical systems. This temporary deviation has been coordinated with the waterway users. No objections to the proposed temporary deviation were raised.

Vessels able to pass through the bridge in the closed position may do so at any time. The bridge will not be able to open for emergencies. Old River can be used as an alternate route for vessels unable to pass through the bridge in the closed position. The Coast Guard will inform waterway users of this temporary deviation via our Local and Broadcast Notices to Mariners, to minimize resulting navigational impacts.

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

Dated: September 4, 2014.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2014–22588 Filed 9–22–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0829]

Drawbridge Operation Regulation; Willamette River, Portland, OR

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 Burlington Northern Santa Fe Railway Bridge, also known as the St. Johns RR Bridge, across the Willamette River, mile 6.9, at Portland, OR. The deviation is necessary to facilitate installation of new rail joints. This deviation allows the bridge to remain in the closed position during maintenance activities.

DATES: This deviation is effective from 7 a.m. on September 23, 2014 to 5 p.m. on October 2, 2014, and will be enforced from 7 a.m. to 5 p.m. on September 23, 2014; from 7 a.m. to 5 p.m. on September 25, 2014; from 7 a.m. to 5 p.m. on September 30, 2014; and from 7 a.m. to 5 p.m. on October 2, 2014.

ADDRESSES: The docket for this deviation, [USCG–2014–0829] 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, Coast Guard Thirteenth 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: Burlington Northern Santa Fe (BNSF) Railway requested this deviation to facilitate the installation of new rail joints on the bridge. The bridge, also known as the St. Johns RR Bridge, crosses the Willamette River at mile 6.9 and provides 54 feet of vertical clearance above Columbia River Datum 0.0 while in the closed position. Under normal operations, this bridge opens on signal as required by 33 CFR 117.5. The deviation period is from 7 a.m. to 5 p.m. on September 23, 2014; from 7 a.m. to 5 p.m. on September 25, 2014; from 7 a.m. to 5 p.m. on September 30, 2014; and from 7 a.m. to 5 p.m. on October 2, 2014. This deviation allows the lift span of the BNSF Railway Bridge across the Willamette River, mile 6.9, to remain in the closed position and need not open for maritime traffic during the periods listed above The bridge shall operate in accordance to 33 CFR § 117.5 at all other times. BNSF will entertain requests from mariners to change the above listed schedule for emergent vessel arrivals or departures that are dependent on water level, given 72 hours advanced notice. The BNSF contact is Ron Berry, who can be reached at (913) 551–4164. Waterway usage on this stretch of the Willamette River includes vessels ranging from commercial tug and barge to small pleasure craft.

Vessels able to pass through the bridge in the closed positions may do so at any time. Barring coordination with BNSF, the bridge will not 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 effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: September 9, 2014.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2014–22591 Filed 9–22–14; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2014–0469; FRL–9912–67–Region 9]

Revisions to the Arizona State Implementation Plan; State Stationary Source Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Arizona State Implementation Plan (SIP). These revisions include two State statutes and certain State rules that govern stationary sources under the jurisdiction of the Arizona Department of Environmental Quality and that establish definitions and other general provisions; ambient air quality standards and area designations; and emissions limitations and other requirements for certain types of stationary sources. Generally, approval of these revisions updates and replaces previously approved provisions in the Arizona SIP, but the EPA is also approving a few rules that are new to the Arizona SIP and a few rescissions that remove certain other rules from the Arizona SIP without replacement. The EPA is approving these revisions because they meet all applicable requirements of the Clean Air Act.

DATES: This rule is effective on November 24, 2014 without further notice, unless EPA receives adverse comments by October 23, 2014. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2014–0469, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or Deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, EPA Region IX, (415) 947–4125, *vineyard.christine@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA.

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I. The State's Submittal

A. What statutes and rules did the State submit?

On July 15, 1998, July 28, 2011, and October 29, 2012, the Arizona Department of Environmental Quality (ADEQ) submitted revisions to the Arizona State Implementation Plan (SIP). ADEQ supplemented the 1998 and 2011 submittals on May 16, 2014, and supplemented the 2012 submittal on September 6, 2013.

These revisions include certain statutes and rules regulating stationary sources under ADEQ's jurisdiction. Under section 110(k)(3) of the Clean Air Act (CAA or ''Act''), EPA is obligated to approve, disapprove, or conditionally approve SIPs and SIP revisions. Table 1 lists the statutes and rules that we are approving in today's action with the corresponding effective dates and submittal dates.

TABLE 1—SUBMITTED ARIZONA STATUTES AND RULES APPROVED IN THIS ACTION

Arizona revised statutes (ARS) Section No.	Title	State effective date	Submitted
49–402	State and county control	Amended through Laws 2002, Ch. 110, § 1.	10/29/12
49–426 (excluding paragraphs D, E.1, F, I, J, and M)[1].	Permits; duties of director; exceptions; applications; objections; fees.	Amended through Laws 1997, Ch. 178, § 5.	07/28/11
Arizona Administrative Code (AAC) Rule No.	**Title**	**Effective Date**	**Submitted**
R18–2–101 [excluding definitions (2), (20), (32), (87), (109), and (122)][2].	Definitions	Various	10/29/12
R18–2–102	Incorporated Materials	08/07/12	10/29/12
R18–2–201	Particulate Matter: PM_{10} and $PM_{2.5}$	08/07/12	10/29/12
R18–2–202	Sulfur Oxides (Sulfur Dioxide)	08/07/12	10/29/12
R18–2–203	Ozone: One-hour Standard and Eight-hour Averaged Standard.	08/07/12	10/29/12
R18–2–204	Carbon monoxide	09/26/90	07/28/11
R18–2–205	Nitrogen Oxides (Nitrogen Dioxide)	08/07/12	10/29/12
R18–2–206	Lead	08/07/12	10/29/12
R18–2–210	Attainment, Nonattainment, and Unclassifiable Area Designations.	08/07/12	10/29/12
R18–2–215	Ambient air quality monitoring methods and procedures	09/26/90	10/29/12
R18–2–216	Interpretation of Ambient Air Quality Standards and Evaluation of Air Quality Data.	03/07/09	10/29/12
R9–3–218 (rescission)	Violations	08/07/12 (repeal)	07/28/11
R18–2–601	General	11/15/93	07/15/98
R18–2–604	Open Areas, Dry Washes, or Riverbeds	11/15/93	07/15/98
R18–2–605	Roadways and Streets	11/15/93	07/15/98
R18–2–606	Material Handling	11/15/93	07/15/98
R18–2–607	Storage piles	11/15/93	07/15/98
R18–2–608	Mineral Tailings	03/07/09	07/28/11
R18–2–614	Evaluation of nonpoint source emissions	08/07/12	07/15/98
R18–2–701	Definitions	08/07/12	10/29/12
R18–2–703	Standards of Performance for Existing Fossil-fuel Fired Steam Generators and General Fuel-burning Equipment.	03/07/09	07/28/11
R18–2–704	Standards of Performance for Incinerators	08/04/07	07/28/11
R18–2–706	Standards of Performance for Existing Nitric Acid Plants	11/15/93	07/15/98
R18–2–707	Standards of Performance for Existing Sulfuric Acid Plants	11/15/93	07/15/98
R9–3–509 (rescission)	Standards of Performance for Existing Petroleum Refineries	Not yet repealed but no applicable sources.	07/15/98
R18–2–714	Standards of Performance for Existing Sewage Treatment Plants.	11/15/93	07/15/98
R18–2–715(F), (G) and (H)	Standards of Performance for Existing Primary Copper Smelters: Site-Specific Requirements.	03/07/09	07/28/11
R9–3–518 (rescission)	Standards of Performance for Existing Kraft Pulp Mills	08/04/07 (repeal)	07/28/11
R18–2–719	Standards of Performance for Existing Stationary Rotating Machinery.	03/07/09	07/28/11
R18–2–720	Standards of Performance for Existing Lime Manufacturing Plants.	03/07/09	07/28/11
R18–2–723	Standards of Performance for Existing Concrete Batch Plants	11/15/93	07/15/98
R18–2–724	Standards of Performance for Fossil-fuel Fired Industrial and Commercial Equipment.	03/07/09	07/28/11
R18–2–726	Standards of Performance for Sandblasting Operations	11/15/93	07/15/98
R18–2–728	Standards of Performance for Existing Ammonium Sulfide Manufacturing Plants.	11/15/93	07/15/98
R18–2–729	Standards of Performance for Cotton Gins	08/04/07	07/28/11
R18–2–730	Standards of Performance for Unclassified Sources	03/07/09	07/28/11
R18–2–732	Standards of Performance for Existing Hospital/Medical/Infectious Waste Incinerators.	08/04/07	07/28/11
Appendix 2	Test Methods and Protocols	10/03/05	07/28/11
Appendix 10 (rescission)	Evaluation of Air Quality Data	03/07/09 (repeal)	07/28/11
Appendix 11 (rescission)	Allowable Particulate Emissions Computations	03/07/09 (repeal)	07/28/11
Not applicable	Arizona Testing Manual for Air Pollutant Emissions, Revision F, March 1992, Section 1.	March 1992	07/28/11

B. Are there previous versions of the statutes and rules in the Arizona SIP?

Most of the submitted statutes and rules will supersede or replace previously-approved versions in the Arizona SIP. See table 2 below for the statutes or rules that are superseded by approval of the statutes and rules covered in this action, and the dates on which the previous versions were approved by EPA. Table 2 also lists the existing SIP rules that are being deleted from the SIP without replacement along with the dates that they were approved by EPA. The following rules are new to the SIP: R18–2–102 (''Incorporated Materials''), R18–2–210 (''Attainment, Nonattainment, and Unclassifiable Area Designations''), and Appendix 2 (''Test Methods and Protocols'').

TABLE 2—SIP STATUTES AND RULES SUPERSEDED OR DELETED FROM ARIZONA SIP IN THIS ACTION

Arizona Revised Statutes (ARS) Section No.	Title	Existing SIP statute that is superseded by this action	Previous approval
49–402	State and county control	49–402	65 FR 36353 (June 8, 2000).
49–426 (excluding paragraphs D, E.1, F, I, J, and M).	Permits; duties of director; exceptions; applications; objections; fees.	36–1707.01	47 FR 26382 (June 18, 1982).

Arizona Administrative Code (AAC) Rule No.	Title	Existing SIP Rule that is superseded (entirely or in part) or deleted by this action	Previous approval
R18–2–101 [excluding definitions (2), (20), (32), (87), (109), and (122)][3].	Definitions	R9–3–101; R9–3–102; R18–2–101.	43 FR 33245 (July 31, 1978); 47 FR 17483 (April 23, 1982); 47 FR 42572 (September 28, 1982); 48 FR 19878 (May 3, 1983); 69 FR 51952 (August 24, 2004).
R18–2–201	Particulate Matter: PM_{10} and $PM_{2.5}$.	R3–3–201	49 FR 41026 (October 19, 1984).
R18–2–202	Sulfur Oxides (Sulfur Dioxide)	R3–3–202	49 FR 41026 (October 19, 1984).
R18–2–203	Ozone: One-hour Standard and Eight-hour Averaged Standard.	R3–3–204	49 FR 41026 (October 19, 1984).
R18–2–204	Carbon monoxide	R9–3–205	49 FR 41026 (October 19, 1984).
R18–2–205	Nitrogen Oxides (Nitrogen Dioxide).	R3–3–206	49 FR 41026 (October 19, 1984).
R18–2–206	Lead	R3–3–207	49 FR 41026 (October 19, 1984).
R18–2–215	Ambient air quality monitoring methods and procedures.	R9–3–215	49 FR 41026 (October 19, 1984).
R18–2–216	Interpretation of Ambient Air Quality Standards and Evaluation of Air Quality Data.	R9–3–216 (paragraph A)	47 FR 17483 (April 23, 1982).
R9–3–218 (rescission)	Violations	R9–3–218 (deleted from SIP)	49 FR 41026 (October 19, 1984).
R18–2–601	General	R9–3–401	47 FR 17483 (April 23, 1982).
R18–2–604	Open Areas, Dry Washes, or Riverbeds.	R9–3–404	49 FR 41026 (October 19, 1984).
R18–2–605	Roadways and Streets	R9–3–405	47 FR 17483 (April 23, 1982).
R18–2–606	Material Handling	R9–3–406	47 FR 17483 (April 23, 1982).
R18–2–607	Storage piles	R9–3–407	47 FR 17483 (April 23, 1982).
R18–2–608	Mineral Tailings	R9–3–408	47 FR 17483 (April 23, 1982).
R18–2–614	Evaluation of nonpoint source emissions.	R9–3–410	47 FR 17483 (April 23, 1982).
R18–2–701	Definitions	R9–3–101; R18–2–101	47 FR 17483 (April 23, 1982); 47 FR 42572 (September 28, 1982); 48 FR 19878 (May 3, 1983); 49 FR 41026 (October 19, 1984); 69 FR 51952 (August 24, 2004).
R18–2–703	Standards of Performance for Existing Fossil-fuel Fired Steam Generators and General Fuel-burning Equipment.	R9–3–503	47 FR 17483 (April 23, 1982).
R18–2–704	Standards of Performance for Incinerators.	R9–3–504	47 FR 17483 (April 23, 1982).
R18–2–706	Standards of Performance for Existing Nitric Acid Plants.	R9–3–506	47 FR 17483 (April 23, 1982).
R18–2–707	Standards of Performance for Existing Sulfuric Acid Plants.	R9–3–507	47 FR 17483 (April 23, 1982).

[1] The EPA will be taking action on ARS section 49–426(F) in a separate rulemaking action that will relate to Arizona's amended New Source Review program. ADEQ does not intend the other paragraphs that are listed (i.e., D, E.1, I, J, and M) to be part of the Arizona SIP.

[2] The EPA will be taking action on the following six definitions in R18–2–101 in a separate rulemaking action that will relate to Arizona's amended New Source Review program: ''actual emissions,'' ''begin actual construction,'' ''construction,'' ''net emissions increase,'' ''potential to emit,'' and ''regulated NSR pollutant.''

Arizona Administrative Code (AAC) Rule No.	Title	Existing SIP Rule that is superseded (entirely or in part) or deleted by this action	Previous approval
R9–3–509 (rescission)	Standards of Performance for Existing Petroleum Refineries.	R9–3–509 (deleted from SIP)	47 FR 17483 (April 23, 1982).
R18–2–714	Standards of Performance for Existing Sewage Treatment Plants.	R9–3–514	47 FR 17483 (April 23, 1982).
R18–2–715(F), (G), (H)	Standards of Performance for Existing Primary Copper Smelters: Site-Specific Requirements.	R18–2–715(F), (G), (H)	69 FR 63321 (November 1, 2004).
R9–3–518 (rescission)	Standards of Performance for Existing Kraft Pulp Mills.	R9–3–518 (deleted from SIP)	47 FR 42572 (September 28, 1982); 47 FR 17483 (April 23, 1982).
R18–2–719	Standards of Performance for Existing Stationary Rotating Machinery.	R9–3–519	47 FR 17483 (April 23, 1982).
R18–2–720	Standards of Performance for Existing Lime Manufacturing Plants.	R9–3–520	47 FR 42572 (September 28, 1982); 47 FR 17483 (April 23, 1982).
R18–2–723	Standards of Performance for Existing Concrete Batch Plants.	R9–3–523	47 FR 17483 (April 23, 1982).
R18–2–724	Standards of Performance for Fossil-fuel Fired Industrial and Commercial Equipment.	R9–3–524	47 FR 17483 (April 23, 1982).
R18–2–726	Standards of Performance for Sandblasting Operations.	R9–3–526	47 FR 17483 (April 23, 1982).
R18–2–728	Standards of Performance for Existing Ammonium Sulfide Manufacturing Plants.	R9–3–528	47 FR 17483 (April 23, 1982).
R18–2–729	Standards of Performance for Cotton Gins.	R9–3–529	49 FR 41026 (October 19, 1984).
R18–2–730	Standards of Performance for Unclassified Sources.	R9–3–502	49 FR 41026 (October 19, 1984).
R18–2–732	Standards of Performance for Existing Hospital/Medical/Infectious Waste Incinerators.	R9–3–504	47 FR 17483 (April 23, 1982).
Appendix 10 (rescission)	Evaluation of Air Quality Data	Appendix 10 (deleted from SIP)	47 FR 17483 (April 23, 1982).
Appendix 11 (rescission)	Allowable Particulate Emissions Computations.	Appendix 11 (deleted from SIP)	49 FR 41026 (October 19, 1984); corrected at 69 FR 2509 (January 16, 2004).
Not applicable	Arizona Testing Manual for Air Pollutant Emissions, Revision F, March 1992, Section 1.	Arizona Testing Manual for Air Pollutant Emissions, Section 1.	47 FR 17483 (April 23, 1982).

C. What is the purpose of the submitted statutes and rules?

ADEQ submitted the statutes and rules to update the Arizona SIP and to delete rules that have been repealed or are otherwise unnecessary to retain in the SIP because the sources to which the requirements had applied no longer exist. The requirements set forth in the submitted statutes and rules include the types of requirements that are needed to comply with CAA section 110(a). EPA's technical support document (TSD) has more information about these statutes and rules.

[3] The EPA will be taking action on the following six definitions in R18–2–101 in a separate rulemaking action that will relate to Arizona's amended New Source Review program: ''actual emissions,'' ''begin actual construction,'' ''construction,'' ''net emissions increase,'' ''potential to emit,'' and ''regulated NSR pollutant.''

II. EPA's Evaluation and Action

A. How is EPA evaluating the submitted provisions?

Generally, SIP requirements must be enforceable (see section 110(a) of the Act) and must not modify the SIP inconsistent with sections 110(l) and 193.

B. Do the submitted provisions meet all applicable requirements?

The statutes and rule revisions approved herein generally renumber and otherwise update statutes and rules that we approved previously in the Arizona SIP. The updated statutes and rules approved herein do not relax any existing emissions limits or standards and meet all applicable requirements. Our approval of them is consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, the EPA is approving the submitted statutes and rule revisions listed in table 1 because we believe they meet all relevant CAA requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted revisions. If we receive adverse comments by October 23, 2014, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on November 24, 2014. This will incorporate these statutes and rule revisions into the federally enforceable SIP.

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 Clean Air Act. Accordingly, this action merely approves State statutes and rule revisions as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 24, 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, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 30, 2014.

Jared Blumenfeld,

Regional Administrator, Region IX.

Editorial Note: This document was received for publication by the Office of Federal Register on September 17, 2014.

Part 52, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart D—Arizona

■ 2. Section 52.120 is amended by:
■ a. Adding paragraphs (c)(27)(i)(C), (c)(43)(i)(C), (c)(45)(i)(D), (c)(50)(i)(C), (c)(54)(i)(G), and (c)(56)(i)(C);
■ b. Revising paragraph (c)(110) introductory text; and
■ c. Adding paragraphs (c)(110)(i)(A)(*3*), (c)(161), and (c)(162) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(27) * * *

(i) * * *

(C) Previously approved on April 23, 1982, in paragraph (c)(27)(i)(B) of this section and now deleted without replacement: R9–3–518 (Paragraphs B and C) and Appendix 10 (Sections A10.1.3.3, A10.1.4 and A10.2.2 to A10.3.4).

* * * * *

(43) * * *

(i) * * *

(C) Previously approved on April 23, 1982, in paragraph (c)(43)(i)(B) of this section and now deleted without replacement: R9–3–518 (Paragraph A.1 to A.5).

* * * * *

(45) * * *

(i) * * *

(D) Previously approved on April 23, 1982, in paragraph (c)(45)(i)(B) of this section and now deleted without replacement: R9–3–509 and Appendix 10 (Sections A10.2 and A10.2.1).

* * * * *

(50) * * *

(i) * * *

(C) Previously approved on April 23, 1982, in paragraph (c)(50)(i)(A) of this section and now deleted without replacement: Appendix 10 (Sections A10.1–A10.1.3.2).

* * * * *

(54) * * *

(i) * * *

(G) Previously approved on September 28, 1982, in paragraph (c)(54)(i)(C) of this section and now deleted without replacement: R9–3–518 (paragraphs A to A.1 and A.2).

* * * * *

(56) * * *

(i) * * *

(C) Previously approved on October 19, 1984, in paragraph (c)(56)(i)(A) of

this section and now deleted without replacement: R9–3–218 and Appendix 11.

* * * * *

(110) New and amended regulations were submitted on July 15, 1998, and supplemented on May 16, 2014, by the Governor's designee.

(i) * * *

(A) * * *

(3) Arizona Administrative Code, title 18 (''Environmental Quality''), chapter 2 (''Department of Environmental Quality—Air Pollution Control''), supp. 12–2, June 30, 2012: R18–2–601 (''General''); R18–2–604 (''Open Areas, Dry Washes, or Riverbeds''); R18–2–605 (''Roadways and Streets''); R18–2–606 (''Material Handling''); R18–2–607 (''Storage Piles''); and R18–2–614 (''Evaluation of Nonpoint Source Emissions''); R18–2–706 (''Standards of Performance for Existing Nitric Acid Plants''); R18–2–707 (''Standards of Performance for Existing Sulfuric Acid Plants''); R18–2–714 (''Standards of Performance for Existing Sewage Treatment Plants''); R18–2–723 (''Standards of Performance for Existing Concrete Batch Plants''); R18–2–726 (''Standards of Performance for Sandblasting Operations''); and R18–2–728 (''Standards of Performance for Existing Ammonium Sulfide Manufacturing Plants'').

* * * * *

(161) The following plan revision was submitted on July 28, 2011, and supplemented on May 16, 2014, by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality.

(1) West's Arizona Revised Statutes, 2012–2013 Compact Edition; title 49 (''Environment''), chapter 3 (''Air Quality''), article 2 (''State Air Pollution Control'') section 49–426 (''Permits; duties of director; exceptions; applications; objections; fees''), excluding paragraphs (D), (E)(1), (F), (I), (J), and (M).

(2) Arizona Administrative Code, title 18 (''Environmental Quality''), chapter 2 (''Department of Environmental Quality—Air Pollution Control''), supp. 09–1, March 31, 2009: R18–2–608 (''Mineral Tailings''); R18–2–703 (''Standards of Performance for Fossil-fuel Fired Steam Generators and General Fuel-burning Equipment''); R18–2–704 (''Standards of Performance for Incinerators''); R18–2–715 (''Standards of Performance for Existing Primary Copper Smelters; Site-Specific Requirements''), excluding paragraphs (A) through (E); R18–2–720 (''Standards of Performance for Existing Lime Manufacturing Plants''); R18–2–724 (''Standards of Performance for Fossil-fuel Fired Industrial and Commercial Equipment''); R18–2–729 (''Standards of Performance for Cotton Gins''); and R18–2–730 (''Standards of Performance for Unclassified Sources'').

(3) Arizona Administrative Code, title 18 (''Environmental Quality''), chapter 2 (''Department of Environmental Quality—Air Pollution Control''), supp. 09–2, June 30, 2009: R18–2–732 (''Standards of Performance for Existing Hospital/Medical/Infectious Waste Incinerators'').

(4) Arizona Administrative Code, title 18 (''Environmental Quality''), chapter 2 (''Department of Environmental Quality—Air Pollution Control''), supp. 12–2, June 30, 2012: R18–2–204 (''Carbon Monoxide''); R18–2–719 (''Standards of Performance for Existing Stationary Rotating Machinery''); and Appendix 2 (''Test Methods and Protocols'').

(5) Arizona Testing Manual for Air Pollutant Emissions, Revision F, March 1992, excluding sections 2 through 7.

(162) The following plan revision was submitted on October 29, 2012, and supplemented on September 6, 2013, by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality

(1) West's Arizona Revised Statutes, 2012–2013 Compact Edition; title 49 (''Environment''), chapter 3 (''Air Quality''), section 49–402 (''State and county control'').

(2) Arizona Administrative Code, title 18 (''Environmental Quality''), chapter 2 (''Department of Environmental Quality—Air Pollution Control''), supp. 12–2, June 30, 2012: R18–2–101 (''Definitions''), excluding definitions (2), (20), (32), (87), (109), and (122); R18–2–102 (''Incorporated Materials''); R18–2–201 (''Particulate matter: PM_{10} and $PM_{2.5}$''); R18–2–202 (''Sulfur Oxides (Sulfur Dioxide)''); R18–2–203 (''Ozone: One-hour Standard and Eight-hour Averaged Standard'') R18–2–205 (''Nitrogen Oxides (Nitrogen Dioxide)''); R18–2–206 (''Lead''); R18–2–210 (''Attainment, Nonattainment, and Unclassifiable Area Designations''); R18–2–215 (''Ambient air quality monitoring methods and procedures''); R18–2–216 (''Interpretation of Ambient Air Quality Standards and Evaluation of Air Quality Data''); and R18–2–701 (''Definitions'').

[FR Doc. 2014–22480 Filed 9–22–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

48 CFR Parts 3002, 3007, 3009, 3016, 3034, 3035, and 3052

[Docket No. DHS–2009–0006]

RIN 1601–AA49

Homeland Security Acquisition Regulation; Lead System Integrators [HSAR Case 2009–003]

AGENCY: Office of the Chief Procurement Officer, DHS

ACTION: Final rule.

SUMMARY: This final rule implements statutory restrictions on contractors acting as lead system integrators in the acquisition of DHS major systems, if they have direct financial interests in the development or construction of the system.

DATES: *Effective Date:* This rule is effective September 23, 2014.

FOR FURTHER INFORMATION CONTACT: Nancy Harvey, Senior Procurement Analyst, at (202) 447–0956 for clarification of content. Please cite HSAR Case 2009–003.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Comments
III. Discussion of Final Rule
IV. Regulatory Analyses
A. Executive Order 12866 Assessment
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
D. National Environmental Policy Act

I. Background

DHS published an interim rule at 75 FR 41097 on July 15, 2010 to implement section 6405 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Public Law 110–28, 121 Stat. 112, 176 (2007) (codified as 6 U.S.C. 396; hereinafter ''Section 396''). Section 396 places limits on firms that can serve as lead system integrators on DHS acquisitions of major systems. Such contractors may have no direct financial interest in the development or construction of any individual system or element of any system of systems they would integrate, unless one of the exceptions stated in the rule has been satisfied.

This final rule adopts the interim rule with minor changes to the authorities to conform to Public Law 111–350, the recodification of title 41 of the United States Code, and to remove references to DHS's internal delegation of authorities that do not directly affect the HSAR.

II. Discussion of Comments

One source submitted comments on the interim rule. A discussion of the comments is provided below.

1. Comment: One comment supported the rule, but recommended that, for purposes of consistency throughout the Department when executing the policy, the final rule be clarified to ensure that the purchase of Lead System Integrator services for DHS from Government-wide Agency Contracts, Federal Supply Schedules, Multiple Award Contracts, or Interagency Acquisition, also be included in the rule.

DHS Response: DHS notes the support and recommendation but believes that clarification in the regulatory text is unnecessary. The rule prohibits, with limited exceptions, any entity performing lead system integrator functions in the acquisition of a major system by DHS from having any direct financial interest in the development or construction of the system or any element of it. The rule applies without regard to the contract type, contracting method, or contract instrument. Therefore, acquisitions of supplies and services under Government-wide Agency Contracts, Federal Supply Schedules, Multiple Award Contracts, or by means of Interagency Acquisition, are already covered under the rule.

2. Comment: The commenter also asked two questions on the implementation of the interim rule. The commenter asked whether it would be appropriate to include the clause at 48 CFR 3052.209–75, Prohibited Financial Interests for Lead System Integrators, by reference or whether the clause should be included as full text. The commenter also wrote that the provision at 3052.209–74 reads as a representation and certification provision, and suggested that the provision should be included in Section K, *Representations and Certifications,* under the Uniform Contract Format, or possibly Section L, *Instructions to Offerors.*

DHS Response: DHS notes that these comments are not requests for changes to the regulatory text, but, rather, are questions on the implementation of the rule. The DHS HSAR Provision and Clause Matrix, available both on the DHS.gov Web site at *http://www.dhs.gov/acquisition-policies-regulations* and on the FARSite Web site at *http://farsite.hill.af.mil,* provide answers to both questions. DHS will also respond to the questions in the below paragraphs.

Both the provision at 48 CFR 3052.209–74 and the clause at 48 CFR 3052.209–75 should be used in full text. Given that the provision and the clause would be used infrequently, that is, only in solicitations and resulting contracts for the acquisition of major systems when the acquisition strategy envisions the use of a lead system integrator, inclusion of the provision and clause in full text will ensure that the potential offerors are fully aware of the restrictions on the use of lead system integrators.

DHS concurs that the provision is a representation and certification provision and should be used in Section K, which incorporates representations, certifications and other statements of offerors.

III. Discussion of Final Rule

Accordingly, the interim HSAR rule published in the **Federal Register** at 75 FR 41097 is adopted as a final rule with minor changes to the authorities.

IV. Regulatory Analyses

A. Executive Order 12866 Assessment

This is not a significant regulatory action under Section 6 of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993, as amended by Executive Order 13563, dated January 21, 2011. The Office of Management and Budget (OMB) has not reviewed it under that Order. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

DHS certifies that this final rule amending (HSAR) 48 CFR 3009.5 will not 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. The factual basis for certification is presented in the following analysis of the effects of this rule. Application of the rule is limited to offerors or contractors providing services as lead system integrators or considering the provision of such services. Lead system integrators are limited to contracts for the development or production of major systems, and often involve the contractor performing functions closely associated with inherently governmental functions.

Under this final rule, an entity that receives a contract as a lead system integrator cannot have any direct financial interest in the development or construction of any individual system or element of any system of systems while performing lead system integrator functions in the acquisition of a major system by DHS under this contract. Lead system integrator contracts usually extend several years, and we estimate that a limited number of such contracts are in effect within DHS at any one time. Very few contracts of this character are awarded in any given year.

The limitations on entities (both large and small) apply only to contractors who choose to perform work for DHS as a lead system integrator. Such an entity could still choose to propose as a subcontractor under the prime contract, thereby mitigating the effect of this rule.

In addition, DHS received no public comments on the interim rule suggesting this rule was a significant economic impact on a substantial number of small entities. Furthermore, this rule is not discretionary and is issued in accordance with the requirements of section 6405 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Public Law 110–28, 121 Stat. 112, 176 (2007) (codified as 6 U.S.C. 396; hereinafter ''Section 396''), which requires DHS to address these matters in its acquisition regulation.

C. Paperwork Reduction Act

The rule does not impose any information collection requirements that require the approval of the OMB under 44 U.S.C. 3501, et seq.

D. National Environmental Policy Act

We have analyzed this rule under DHS Directive 023–01, Environmental Planning Program, which guides the Department in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule, which does not involve any extraordinary circumstances, is categorically excluded under paragraphs A3(b) and A3(d) in Table I of Appendix A of Directive 023–01 because it implements legislation by amending acquisition regulations without changing the regulation's environmental effect.

List of Subjects in 48 CFR Parts 3002, 3007, 3009, 3016, 3034, 3035, and 3052

Government procurement.

David R. Dasher,

Acting Deputy Chief Procurement Officer.

■ Accordingly, DHS adopts as a final rule the interim HSAR rule published in the **Federal Register** at 75 FR 41097 on July 15, 2010, with the following changes:

PARTS 3002, 3007, 3009, 3016, 3034, 3035, and 3052—[AMENDED]

■ 1. The authority citation for parts 3002, 3007, 3009, 3016, 3034, 3035, and 3052 is revised to read as follows:

Authority: 5 U.S.C. 301–302, 41 U.S.C. 1707, 41 U.S.C. 1702, and 48 CFR part 1 and subpart 1.3.

[FR Doc. 2014–22495 Filed 9–22–14; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1511

[Docket No. TSA–2002–11334; Amendment No. 1511–3]

RIN 1652–AA01

Cessation of the Aviation Security Infrastructure Fee (ASIF)

AGENCY: Transportation Security Administration, DHS.

ACTION: Final rule.

SUMMARY: The Transportation Security Administration (TSA) is issuing this final rule to conform its regulations to the repeal of the authority to impose the Aviation Security Infrastructure Fee (ASIF) on air carriers and foreign air carriers in air transportation.

DATES: This rule is effective at 11:59 p.m. (Eastern Daylight Time) on September 30, 2014.

FOR FURTHER INFORMATION CONTACT: Michael Gambone, Office of Revenue, TSA–14, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6014; telephone (571) 227–2323; email: *tsa-fees@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Document

You may obtain an electronic copy using the Internet by—

(1) Searching the electronic Federal Docket Management System (FDMS) Web page at *http://www.regulations.gov;*

(2) Accessing the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR* to view the daily published **Federal Register** edition; or accessing the ''Search the **Federal Register** by Citation'' in the ''Related Resources'' column on the left, if you need to do a Simple or Advanced search for information, such as a type of document that crosses multiple agencies or dates; or

(3) Visiting TSA's Security Regulations Web page at *http://www.tsa.gov* and accessing the link for ''Stakeholders'' at the top of the page, then the link ''Research Center'' in the left column.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within TSA's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Persons can obtain further information regarding SBREFA on the Small Business Administration's Web page at *http://www.sba.gov/advo/laws/law_lib.html.*

Good Cause for Immediate Adoption

This action is being taken without providing the opportunity for notice and comment. Section 44940(d) of title 49, U.S.C., exempts the imposition of the civil aviation security fees authorized in section 44940 from the procedural rulemaking notice and comment procedures set forth in 5 U.S.C. 553 of the Administrative Procedure Act (APA).[1]

Apart from the statutory exemption discussed above, the APA allows an agency to forego notice and comment rulemaking when ''the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b). Section 601(a) of the Bipartisan Budget Act of 2013[2] (Budget Act) repeals TSA's authority to collect the fee beginning October 1, 2014. Because collection of the fee will end on that date regardless of whether this rulemaking is published, TSA finds that good cause exists under 5 U.S.C. 553(b) for making this a final rule without notice and comment. As this rulemaking simply conforms TSA's regulations to the statute, notice and an opportunity for public comment unnecessary.

I. Purpose of the Regulatory Action

The purpose of this final rule is to conform TSA's regulations to changes in its authorities. In 2001, the Aviation and Transportation Security Act (ATSA) authorized TSA to impose a fee to defray the government's costs for providing U.S. civil aviation security services. One fee was imposed on passengers (49 U.S.C. 44940(a)(1)). To the extent the revenue collected from that fee did not defray all of the relevant costs, TSA was authorized to impose a second fee on air carriers and foreign air carriers in air transportation (collectively referred to as ''carriers'').[3] Implementing regulations to impose the ASIF were published in 2002.[4] The Budget Act restructured the fee imposed on passengers (increasing the estimated revenue from this fee)[5] and repealed TSA's authority to impose the fee on carriers, effective October 1, 2014.[6] Therefore, imposition of the ASIF will cease based on the statute, regardless of any changes to TSA's regulations, but TSA is also issuing this final rule to conform 49 CFR part 1511 to its statutory authority.

II. Background

As authorized by the Aviation and Transportation Security Act (ATSA), regulations of the Transportation Security Administration (TSA) require U.S. air carriers and foreign air carriers to pay a fee reflecting the costs for screening passengers and property in calendar year (CY) 2000 in order to defray the Federal Government's costs for assuming these responsibilities. Current 49 CFR part 1511 requires U.S. air carriers and foreign air carriers (collectively referred to as ''carriers'') to pay an ASIF based on their actual passenger and property screening costs for calendar year (CY) 2000.[7] While ATSA provides authority for TSA to reapportion the fee across the industry

[1] This provision of the statute reads: ''(d) Imposition of Fee.—(1) In general.—Notwithstanding section 9701 of title 31 and the procedural requirements of section 553 of title 5, the Under Secretary shall impose the fee under subsection (a)(1), and may impose a fee under subsection (a)(2), through the publication of notice of such fee in the **Federal Register** and begin collection of the fee within 60 days of the date of enactment of this Act, or as soon as possible thereafter. * * * (3) Subsequent modification of fee.—After imposing a fee in accordance with paragraph (1), the Under Secretary may modify, from time to time through publication of notice in the **Federal Register**, the imposition or collection of such fee, or both. * * * *''

[2] Public Law 113–67 (Dec. 26, 2013; 127 Stat. 1165).

[3] *See* 49 U.S.C. 44940(a)(2) (2002).

[4] *See* 67 FR 7926 (Feb. 20, 2002) codified at 49 CFR part 1511.

[5] TSA amended its regulations to implement the restructured fee through an Interim Final Rule. *See* 79 FR 35462 (June 20, 2014). The Budget Act increased revenue to be collected directly from passengers and removed revenue to be collected directly from air carriers.

[6] *See* Budget Act at § 601(a).

[7] *See* 49 CFR part 1511.

based on market share,[8] the current regulations only apply to carriers in operation in CY 2000. Under the Interim Final Rule (IFR), published in 2002,[9] carriers are continuing to remit the same amount to TSA based on their CY 2000 passenger and property screening costs. To the extent carriers that operated in CY 2000 are no longer operating, their portion of the ASIF is uncollected. Similarly, as previously noted, carriers that have entered the market since CY 2000 are not currently subject to the fee.

III. Summary of the Final Rule

Through this Final Rule, TSA is conforming its regulations to repeal of the authority to impose the ASIF. No new ASIF liability will be incurred after 11:59 p.m. on September 30, 2014. Any ASIF liability incurred before 11:59 p.m. on September 30, 2014, must be transmitted to TSA consistent with current procedures. To mitigate the possibility for any confusion regarding the applicable requirements and procedures for ASIF liability incurred before the effective date of this final rule and remittance procedures, the relevant provisions of 49 CFR part 1511 are not being modified (such as sections 1511.5 and 1511.7). TSA is removing the requirements for an independent audit and record keeping (sec. 1511.9) because they are unnecessary once this final rule takes effect. The Paperwork Reduction Act implications of this amendment are discussed below.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501. *et seq.*) requires that a Federal agency consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. As protection provided by the Paperwork Reduction Act, as amended, 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. TSA currently has an approved information collection related to ASIF records retention through March 31, 2016.[10] With this final rule, TSA is discontinuing the information collection request by removing the requirement to retain these records. The annual average burden associated with this recordkeeping requirement is estimated to be $24,031. TSA has submitted to OMB a discontinuation request for the currently approved information collection.

Regulatory Impact Analyses

Executive Orders Nos. 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rulemaking is an ''economically significant regulatory action,'' under section 3(f) of Executive Order No. 12866. As further required by this Executive Order, OMB has reviewed this final rule and TSA has prepared an analysis of its estimated costs and benefits, presented in the following paragraphs. Table 1 presents the OMB Circular A–4 Accounting Statement for this final rule.

As a result of the Budget Act, carriers will no longer be required to pay the ASIF effective October 1, 2014.[11] Therefore, TSA is issuing this final rule to conform its regulations to its statutory authority.[12] This is not an implementing regulation, as the statute clearly implements the cessation of the ASIF absent any action by TSA.

TABLE 1—OMB A–4 ACCOUNTING STATEMENT

[Pre-Statute Baseline]

Category		Estimate
Benefits		
. Annualized monetized benefits Annualized quantified, but unmonetized, benefits. Qualitative (un-quantified) benefits.	$59,196	7% discount rate.
Costs		
Annualized monetized costs. Annualized quantified, but unmonetized, costs Qualitative (un-quantified) costs		
Transfers		
Reduction in annualized monetized transfers	−$373,200,000	7% discount rate.
From whom to whom?	Reduction in transfer payments from industry to the Government (as the Government will no longer be receiving the transfer of ASIF payments for security services provided).	

Under the authority granted to TSA under 49 U.S.C. 449040 as enacted in 2002, TSA has authority to collect a fee from carriers. The amount that TSA could collect under that authority was capped at $420 million.[13] The Budget

[8] *See* 49 U.S.C. 44940(a)(2)(B)(iii) (2013).

[9] 67 FR 7926 (Feb. 20, 2002).

[10] See OMB Control No: 1652–0018.

[11] *See* Budget Act § 601(a).

[12] *See* 49 CFR part 1511.

[13] For an opinion upholding this determination, *see Southwest Airlines Co.* v. *Transportation Security Administration,* 650 F.3d 752 (D.C. Cir. 2011). A copy of the opinion is available at *http://www.tsa.gov/stakeholders/aviation-security-infrastructure-fee-air-carrier-fee.*

Act repeals that authority effective October 1, 2014. Therefore, the cessation of the ASIF is the result of a statutory change that takes effect on October 1, 2014.

In response to this amendment to its statutory authority, TSA decided to issue this final rule to conform current regulations. Although cessation of fee imposition would occur absent any action by TSA, we assess the impacts of this final rule from the baseline prior to the change in statutory authority, pursuant to OMB Circular A–4, which calls for agencies to use a pre-statute baseline in cases where a rule, or portions of a rule, simply restates statutory requirements that would be self-implementing, even in the absence of the regulatory action.[14]

Analyzing this final rule from the pre-statute baseline considers the cessation of the ASIF to be an economic impact of this final rule. The following analysis considers the cessation of the ASIF as a reduction in transfer payments from industry to the Government, as the Government will no longer be receiving the transfer of ASIF payments for security services provided.

Impact of Cessation of the ASIF

TSA has identified three impacts of the cessation of the ASIF: The Government will no longer collect the transfer payment from industry; industry will no longer bear the burden to remit the ASIF to TSA monthly; and industry will no longer bear the burden of retaining records related to the ASIF. Estimates of these impacts are presented below:

• *Government Will Stop Imposing Payments on the Industry.* To estimate the impacts of this reduction in ASIF transfer payments, TSA assessed historical ASIF collections to determine the average amount transferred over a 10-year period of analysis. Table 2 presents the historical ASIF collections.[15]

TABLE 2—HISTORICAL ASIF COLLECTIONS

[Fiscal Year (FY) 2004 to FY 2013]

Fiscal year	ASIF collections from carriers[16] (rounded up to nearest million)
2004	$283,000,000
2005	307,000,000
2006	316,000,000
2007	573,000,000
2008	413,000,000
2009	406,000,000
2010	282,000,000
2011	400,000,000
2012	380,000,000
2013	372,000,000
Ten Year Average	373,200,000

Using the 10-year average ASIF collection for FY 2004 through FY 2013 of $373,200,000, TSA calculates the 10-year impact of cessation of the ASIF as a reduction in transfer payments from industry to Government, placing the burden of funding security services now paid for by the ASIF on the Government. Table 3 presents the 10-year reduction in transfer payments.

TABLE 3—FOREGONE ASIF TRANSFER PAYMENT FROM INDUSTRY TO GOVERNMENT

Year	Reduction in ASIF transfer payments (undiscounted)	Reduction in ASIF transfer payments (3% discounting)	Reduction in ASIF transfer payments (7% discounting)
1	$373,200,000	$362,330,097	$348,785,047
2	373,200,000	351,776,793	325,967,333
3	373,200,000	341,530,867	304,642,368
4	373,200,000	331,583,366	284,712,493
5	373,200,000	321,925,598	266,086,442
6	373,200,000	312,549,125	248,678,918
7	373,200,000	303,445,752	232,410,204
8	373,200,000	294,607,526	217,205,798
9	373,200,000	286,026,725	202,996,073
10	373,200,000	277,695,849	189,715,956
Total	3,732,000,000	3,183,471,699	2,621,200,631
Annualized	373,200,000	373,200,000	373,200,000

Note: Totals may not add due to rounding. The annualized reductions in ASIF transfer payments are estimated using OMB guidance (*see http://www.whitehouse.gov/sites/default/files/omb/assets/OMB/circulars/a004/a-4_FAQ.pdf,* pages 7–8). These annualized estimates are the same regardless of discounting since TSA uses a constant reduction in ASIF transfer payments based on the 10-year average ASIF collection presented in Table 2.

For the 10-year analysis period, TSA estimated the total undiscounted reduction in transfer payment of approximately $3.7 billion, and the total discounted reduction in transfer payment of $3.2 billion using a three percent discount rate, and $2.6 billion using a seven percent discount rate. The cessation of ASIF imposition will benefit industry as it will no longer be required to make these transfer payments to the Government.

• *Cost Savings for Stopping Monthly ASIF Transmission to TSA.* To estimate the cost savings to carriers no longer required to remit the ASIF to TSA, we calculated the average local charge for an electronic transaction from one bank

[14] *See* OMB Circular A–4 (*http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), pages 15–16: ''In some cases, substantial portions of a rule may simply restate statutory requirements that would be self-implementing, even in the absence of the regulatory action. In these cases, you should use a pre-statute baseline.''

[15] TSA is not currently collecting the full $420 million allowed under ATSA due to changes in the industry since the ASIF was established in 2002.

[16] TSA data.

account to another, and applied the monthly cost to each carrier currently remitting a fee to TSA. TSA estimates that the average bank transaction costs $26.40 per month for an electronic transfer of fees to TSA.[17] Because almost all carriers would transmit monthly ASIF payments to TSA electronically, TSA used the $26.40 per month per electronic transfer, discussed above, to calculate transmission costs.

The total number of affected carriers required to pay the ASIF is estimated to be 111 (37 air carriers and 74 foreign air carriers) based on the number of carriers remitting ASIF payments to TSA in FY 2013. To estimate the cost savings to industry, TSA multiplied the monthly bank fee of $26.40 by 12 months to obtain an average annual bank fee of $316.80 for each carrier currently remitting the ASIF. We then multiplied the annual bank fee ($316.80) by the number of carriers (111) to obtain the total annual cost savings, which equals $35,165 ($316.80 × 111). Table 4 presents the 10-year cost savings for stopping monthly ASIF transmission to TSA.

TABLE 4—COST SAVINGS TO CARRIERS FOR STOPPING MONTHLY ASIF TRANSMISSION TO TSA

Year	Cost savings (undiscounted)	Cost savings (3% discounting)	Cost savings (7% discounting)
1	$35,165	$34,141	$32,864
2	35,165	33,146	30,714
3	35,165	32,181	28,705
4	35,165	31,243	26,827
5	35,165	30,333	25,072
6	35,165	29,450	23,432
7	35,165	28,592	21,899
8	35,165	27,759	20,466
9	35,165	26,951	19,127
10	35,165	26,166	17,876
Total	351,648	299,963	246,983
Annualized	35,165	35,165	35,165

Note: Totals may not add due to rounding.

• *Cost Savings for Removal of Recordkeeping Requirements.* When setting the ASIF in 2002, all carriers engaged in air transportation, foreign air transportation, and intrastate air transportation in 2000 were required to submit their CY 2000 security screening costs to TSA.[18] Carriers were required to use the form in Appendix A to 49 CFR part 1511 to itemize their security costs by specific cost categories. In this final rule, TSA is removing current § 1511.9, requiring recordkeeping of documents related to CY 2000 costs. TSA estimated the benefit to covered carriers due to the elimination of this data and document retention requirement. TSA estimated the benefit of no longer maintaining these documents by summing the avoided storage retention costs of $71[19] and the avoided annual labor requirement of $145.50[20] to estimate a per-carrier savings of $216.50. There are 111[21] carriers currently paying these fees; the change amounts to an annual savings of $24,031 ($216.50 × 111). Table 5 summarizes these cost savings.

TABLE 5—COST SAVINGS TO CARRIERS FROM ELIMINATION OF RECORDKEEPING

Year	Total savings (undiscounted)	Total savings (3% discounting)	Total savings (7% discounting)
1	$24,031	$23,331	$22,459
2	24,031	22,652	20,990
3	24,031	21,992	19,617
4	24,031	21,351	18,333
5	24,031	20,730	17,134
6	24,031	20,126	16,013
7	24,031	19,540	14,965
8	24,031	18,971	13,986
9	24,031	18,418	13,071
10	24,031	17,882	12,216
Total	240,313	204,992	168,786

[17] This estimate is based on the average of the 10 largest U.S. Banks wire transfer fee. *http://www.mybanktracker.com/news/2013/09/27/comparing-top-10-bank-wire-transfer-fees-fall-2013.*

[18] 49 CFR 1511.5(d).

[19] ICR Supporting Statement (OMB control Number 1652–0018) cost of records storage ($54.60 in 2000) adjusted for 2013 using GDP deflator.

[20] To estimate the annual labor requirement, TSA uses the Bureau of Labor Statistics (BLS) median hourly wage for all management occupations (11–0000) within the Air Transportation sector (NAICS 481000), which is $49.33 (*http://www.bls.gov/oes/2013/may/naics3_481000.htm#00-0000*). TSA applies a load factor of 1.4747 to this wage, to obtain a loaded hourly wage of $72.75. As the ICR Supporting Statement (OMB control Number 1652–0018) states that the annual burden would require two labor hours records management, TSA multiplies $72.75 by two to get a total labor cost savings of $145.50.

[21] Number of carriers remitting the ASIF to TSA in FY 2013.

TABLE 5—COST SAVINGS TO CARRIERS FROM ELIMINATION OF RECORDKEEPING—Continued

Year	Total savings (undiscounted)	Total savings (3% discounting)	Total savings (7% discounting)
Annualized	24,031	24,031	24,031

Note: Totals may not add due to rounding.

For the 10-year analysis period, TSA estimated the total undiscounted benefits of the rule for elimination of recordkeeping to be $240,313, and the total discounted benefits to be $204,992 using a three percent discount rate, and $168,786 using a seven percent discount rate. The benefits arise from cost savings realized by carriers who no longer have to retain data and documents on their costs in CY 2000.

Table 6 show the total savings to the carriers over a 10-year period.

TABLE 6—TOTAL COST SAVINGS TO CARRIERS

Year	Total savings (undiscounted)	Total savings (3% discounting)	Total savings (7% discounting)
1	$59,196	$57,472	$55,323
2	59,196	55,798	51,704
3	59,196	54,173	48,322
4	59,196	52,595	45,160
5	59,196	51,063	42,206
6	59,196	49,576	39,445
7	59,196	48,132	36,864
8	59,196	46,730	34,453
9	59,196	45,369	32,199
10	59,196	44,047	30,092
Total	591,961	504,955	415,768
Annualized	59,196	59,196	59,196

Note: Totals may not add due to rounding.

For the 10-year analysis period, TSA estimated the total cost savings of $591,961 for all carriers, and a total discounted savings of $540,955 using a three percent discount rate, and $415,768 using a seven percent discount rate.

Alternatives Considered

For the purposes of this regulatory impact analysis, TSA analyzed several alternatives when considering the impact of this final rule. The Budget Act repeals 49 U.S.C. 44940(a)(2) and, therefore, removes any TSA discretion to impose the ASIF. As of October 1, 2014, TSA no longer has statutory authority to impose the ASIF, and regardless of any action by TSA, the affected carriers will no longer incur ASIF liability after that date. As such, any alternatives considered by TSA would have to include cessation of the imposition of the ASIF. Table 7 below summarizes the regulatory alternatives considered:

- Alternative 1 (Preferred—Cessation of ASIF and Recordkeeping Requirements): Alternative 1, the preferred alternative is discussed above and would result in an undiscounted 10-year cost savings to industry of $591,961.
- Alternative 2 (No Action—No ASIF Rulemaking): As the BBA is self-implementing in the absence of any TSA amendments to its regulations, this alternative would have the same results as the preferred alternative, in other words, the affected carriers will no longer incur ASIF liability. In the absence of regulatory action, there could be some uncertainty with respect to whether related record retention requirements remained in place.
- Alternative 3 (Cessation of ASIF and Maintenance of Recordkeeping Requirements): Under this alternative, TSA would cease to collect the ASIF from the affected carriers, but TSA would retain the recordkeeping requirements for carriers to use the form in Appendix A to 49 CFR part 1511 to itemize their security costs by specific cost categories. This would reduce the cost savings to affected carriers, from an undiscounted 10-year cost savings of $561,961 in the preferred alternative to an undiscounted 10-year cost savings of $351,648. TSA rejects this alternative because it would fail to maximize savings to the affected carriers, without sufficient justification.

TABLE 7—COMPARISON OF ALTERNATIVES

Alternatives	Description	10-year cost savings (undiscounted)
Alternative 1—Preferred Alternative	TSA repeals the ASIF and all associated requirements	$591,961
Alternative 2—No Action	TSA does not publish a rulemaking. ASIF no longer collected due to BBA	591,961
Alternative 3—Maintain Recordkeeping Requirements.	TSA repeals the collection of the ASIF, but requires airlines to comply with current recordkeeping requirements.	351,648

Regulatory Flexibility Act Assessment

The Regulatory Flexibility Act (RFA) of 1980 [22] requires agencies to consider the impact of their regulatory proposals on small entities, to analyze effective alternatives that minimize small entity impacts, and to make their analyses available for public comment. Small entities include small businesses, not-for-profit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity. When no notice of proposed rulemaking has first been published, no such assessment is required for a final rule. Furthermore, 5 U.S.C. 553(b)(B) exempts rules from the requirements of the RFA when an agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. As previously discussed in the preamble, this rule is exempt from the procedural rulemaking requirements of 5 U.S.C. 553.

International Trade Impact Assessment

The Trade Agreement Act of 1979 [23] prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. TSA has assessed the potential effect of this rulemaking and as TSA has determined that there are no associated industry costs, it does not impose significant barriers to international trade.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' This rule does not contain such a mandate. Moreover, the requirements of Title II of UMRA do not apply when rulemaking actions are taken without the issuance of a notice of proposed rulemaking. For reasons discussed above, no notice of proposed rulemaking is required for this regulatory action. The requirements of Title II of the Act, therefore, do not apply and TSA has not prepared a statement under the Act.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is TSA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. TSA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

The ICAO guidance document on aviation fees and charges, ICAO Document 9082 (Ninth Edition—2012), ICAO's Policies on Charges for Airports and Air Navigation Services, recommends consultations before fees are imposed on carriers. In addition, Article 12 of the Air Transport Agreement between the United States of America and the European Community and its Member States, signed on 25 and 30 April 2007, encourages consultation between the charging authority and affected carriers.

As no fees are being imposed as a result of this rulemaking, no consultation or additional assessment is required.

Executive Order 13132, Federalism

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

Environmental Analysis

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment. This action is covered by categorical exclusion (CATEX) number A3(b) in DHS Management Directive 023–01 (formerly Management Directive 5100.1), Environmental Planning Program, which guides TSA compliance with NEPA.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects for 49 CFR Part 1511

Accounting, Air carriers, Air transportation, Auditing, Enforcement, Federal oversight, Foreign air carriers, Reporting and recordkeeping requirements, Security measures.

The Amendment

In consideration of the foregoing, the Transportation Security Administration amends part 1511 of Chapter XII of Title 49, Code of Federal Regulations, as follows:

Subchapter A—Administrative and Procedural Rules

PART 1511—AVIATION SECURITY INFRASTRUCTURE FEE

■ 1. The authority citation for part 1511 continues to read as follows:

Authority: 49 U.S.C. 114, 40113, 44901, and 44940.

■ 2. Remove and reserve § 1511.9.

■ 3. Add § 1511.15 to read as follows:

§ 1511.15 Cessation of the Aviation Security Infrastructure Fee.

Notwithstanding 49 CFR 1511.5 and 1511.7, or any other provision of this part, beginning 11:59 p.m. (Eastern Daylight Time) on September 30, 2014, an air carrier or foreign air carrier engaged in air transportation will not incur any further obligations to make payments to TSA that otherwise would be required under this part. Any unremitted Aviation Security Infrastructure Fees incurred by an air carrier or foreign air carrier before 11:59 p.m. (Eastern Daylight Time) on September 30, 2014, are due by October 31, 2014.

Dated: September 17, 2014.

Melvin J. Carraway,

Deputy Administrator.

[FR Doc. 2014–22617 Filed 9–22–14; 8:45 am]

BILLING CODE 9105–05–P

[22] Public Law 96–354 (94 Stat. 1164; Sept. 19, 1980).

[23] Public Law 96–39 (93 Stat. 144; July 26, 1979).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130919816–4205–02]

RIN 0648–XD501

Fisheries of the Northeastern United States; Atlantic Herring Fishery; 2014 Sub-Annual Catch Limit (ACL) Harvested for Management Area 3

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

ACTION: Temporary rule; directed fishery closure.

SUMMARY: NMFS is closing the directed herring fishery in management Area 3, because it projects that 92 percent of the 2014 catch limit for that area will have been caught by the effective date. This action is necessary to comply with the regulations implementing the Atlantic Herring Fishery Management Plan and is intended to prevent excess harvest in Area 3.

DATES: Effective 0001 hr local time, September 23, 2014, through December 31, 2014.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Management Specialist, (978) 281–9224.

SUPPLEMENTARY INFORMATION: The reader can find regulations governing the herring fishery at 50 CFR part 648. The regulations require annual specification of the overfishing limit, acceptable biological catch, annual catch limit (ACL), optimum yield, domestic harvest and processing, U.S. at-sea processing, border transfer, and sub-ACLs for each management area. The 2014 Domestic Annual Harvest is 107,800 metric tons (mt); the 2014 sub-ACL allocated to Area 3 is 42,000 mt, and 1,260 mt of the Area 3 sub-ACL is set aside for research (78 FR 61828, October 4, 2013). The 2014 Area 3 sub-ACL was reduced to 40,675 mt to account for a 1,325 mt overage in 2012 (79 FR 15253, March 19, 2014).

The regulations at § 648.201 require that when the NMFS Administrator of the Greater Atlantic Region (Regional Administrator) projects herring catch will reach 92 percent of the sub-ACL allocated in any of the four management areas designated in the Atlantic Herring Fishery Management Plan (FMP), NMFS will prohibit herring vessel permit holders from fishing for, catching, possessing, transferring, or landing more than 2,000 lb (907.2 kg) of herring per trip or calendar day in or from the specified management area for the remainder of the fishing year. The Regional Administrator monitors the herring fishery catch in each of the management areas based on dealer reports, state data, and other available information. NMFS publishes notification in the **Federal Register** of the date that the catch is projected to reach 92 percent of the management area sub-ACL and closure of the directed fishery in the management area for the remainder of the fishing year. After the closure, no vessel may offload and/or sell more than 2,000 lb (907.2 kg) of herring from Area 3 unless that vessel entered port before the closure. During the directed fishery closure, vessels may transit Area 3 with more than 2,000 lb (907.2 kg) of herring on board only under the conditions specified below.

The Regional Administrator has determined, based on dealer reports and other available information, that the herring fleet will have caught 92 percent of the total herring sub-ACL allocated to Area 3 (37,421 mt) for 2014 by September 23, 2014. Therefore, effective 0001 hr local time, September 23, 2014, federally permitted vessels may not fish for, catch, possess, transfer, or land more than 2,000 lb (907.2 kg) of herring per trip or calendar day, in or from Area 3 through December 31, 2014, except that vessels that have entered port before 0001 hr on September 23, 2014, may offload and sell more than 2,000 lb (907.2 kg) of herring from Area 3 from that trip after the closure. During the directed fishery closure, September 23, 2014, through December 31, 2014, a vessel may transit through Area 3 with more than 2,000 lb (907.2 kg) of herring on board, provided the vessel did not fish for or catch more than 2,000 lb (907.2 kg) of herring in Area 3 and stows all fishing gear aboard, making it unavailable for immediate use as required by § 648.2. Effective 0001 hr, September 23, 2014, NMFS also advises federally permitted dealers that they may not receive herring from federally permitted herring vessels that harvest more than 2,000 lb (907.2 kg) of herring from Area 3 through 2400 hr local time, December 31, 2014, unless it is from a trip landed by a vessel that entered port before 0001 hr on September 23, 2014. Beginning on January 1, 2015, the 2015 allocation for Area 3 becomes available.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

NMFS finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest and impracticable. This action closes the directed herring fishery for Management Area 3 through December 31, 2014, under current regulations. The regulations at § 648.201(a) require such action to ensure that herring vessels do not exceed the 2014 sub-ACL allocated to Area 3. The herring fishery opened for the 2014 fishing year on January 1, 2014. Data indicating the herring fleet will have landed at least 92 percent of the 2014 sub-ACL allocated to Area 3 have only recently become available. If implementation of this closure is delayed to solicit prior public comment, the sub-ACL for Area 3 for this fishing year may be exceeded, thereby undermining the conservation objectives of the FMP. If sub-ACLs are exceeded, the excess must also be deducted from a future sub-ACL and would reduce future fishing opportunities. NMFS further finds, pursuant to 5 U.S.C 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

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

Dated: September 17, 2014.

Emily H. Menashes,

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

[FR Doc. 2014–22572 Filed 9–18–14; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 140117052–4402–02]

RIN 0648–XD486

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for the Commonwealth of Massachusetts

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the 2014 summer flounder commercial quota allocated to the Commonwealth of Massachusetts has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Massachusetts for the remainder of calendar year 2014, unless additional quota becomes available

through a transfer from another state. Regulations governing the summer flounder fishery require publication of this notification to advise Massachusetts that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no Federal commercial quota is available for landing summer flounder in Massachusetts.

DATES: Effective 0001 hours, September 22, 2014, through December 31, 2014.

FOR FURTHER INFORMATION CONTACT: Carly Bari, (978) 281–9224, or *Carly.Bari@noaa.gov.*

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102.

The initial total commercial quota for summer flounder for the 2014 fishing year was set at 10,835,720 lb (4,915,000 kg) (79 FR 29371, May 22, 2014). The percent allocated to vessels landing summer flounder in Massachusetts is 6.82046 percent, resulting in a commercial quota of 739,046 lb (335,226 kg). The 2014 allocation was adjusted to 688,593 lb (312,340 kg) after the deduction of research set-aside and quota overages for 2013.

The Administrator, Greater Atlantic Region, NMFS (Regional Administrator), monitors the state commercial landings and determines when a state's commercial quota has been harvested. NMFS is required to publish notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the 2014 Massachusetts commercial summer flounder quota will be harvested by September 22, 2014.

Section 648.4(b) provides that Federal permit holders agree, as a condition of the permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, September 22, 2014, landings of summer flounder in Massachusetts by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2014 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, September 22, 2014, federally permitted dealers are also notified that they may not purchase summer flounder from federally permitted vessels that land in Massachusetts for the remainder of the calendar year, or until additional quota becomes available through a transfer from another state.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. This action closes the summer flounder fishery for Massachusetts until January 1, 2015, under current regulations. The regulations at § 648.103(b) require such action to ensure that summer flounder vessels do not exceed quotas allocated to the states. If implementation of this closure was delayed to solicit prior public comment, the quota for this fishing year will be exceeded, thereby undermining the conservation objectives of the Summer Flounder Fishery Management Plan. The AA further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reason stated above.

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

Dated: September 18, 2014.

Emily H. Menashes,

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

[FR Doc. 2014–22599 Filed 9–18–14; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 140417346–4575–02]

RIN 0648–XD514

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: Through this action NMFS is prohibiting directed fishing for Pacific sardine off the coasts of Washington, Oregon and California. This action is necessary because the adjusted non-tribal directed harvest allocation of approximately 7,274 metric tons (mt) for the second harvest allocation period from September 15, 2014, through December 31, 2014, has been projected to have been reached. The allocation for the second period increased from the initial assigned allocation primarily as a result of the release to the non-treaty sector of 2,500 mt by the Quinault Indian Nation and the coastal treaty tribes from overall the treaty set-aside of 4,000 mt. From the effective date of this rule until December 31, 2014, Pacific sardine may be harvested only as part of either the live bait or tribal fishery or incidental to other fisheries; the incidental harvest of Pacific sardine is limited to 45-percent by weight of all fish per trip. Fishing vessels must cease fishing (be at shore and in the process of offloading) at or before the effective date of this closure.

DATES: Effective 12:01 a.m. Pacific Daylight Time (PDT) September, 20, 2014, through 11:59 p.m., December 31, 2014.

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

SUPPLEMENTARY INFORMATION: This document announces that based on the best available information recently obtained from the fishery and information on past fishing effort, the non-tribal directed fishing harvest allocation for the 2014–2015 harvest allocation period from September 15, 2014, through December 31, 2014, will be reached and therefore directed fishing for Pacific sardine is being closed until the next allocation period begins on January 1, 2015. Fishing vessels must cease fishing (be at shore and in the process of offloading) at or before the effective date of this closure. From the effectiveness of this closure, through December 31, 2014, Pacific sardine may be harvested only as part of either the live bait or tribal fishery or incidental to other fisheries, with the incidental harvest of Pacific sardine limited to 45-percent by weight of all fish caught during a trip.

NMFS manages the Pacific sardine fishery in the U.S. exclusive economic zone (EEZ) off the Pacific coast (California, Oregon, and Washington) in accordance with the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). Annual specifications published

in the **Federal Register** establish the allowable harvest levels (i.e. annual catch limit/harvest guideline (HG)) for each Pacific sardine fishing season. If during any of the seasonal allocation periods the applicable directed harvest allocation is projected to be taken, and the fishery is closed, only incidental harvest is allowed. For the remainder of the period, any incidental Pacific sardine landings will be counted against that period's incidental set aside. In the event that an incidental set-aside is projected to be attained, all fisheries will be closed to the retention of Pacific sardine for the remainder of the period via appropriate rulemaking.

Under 50 CFR 660.509, if the total allocation or any specific apportionment levels for Pacific sardine are reached at any time, NMFS is required to close the Pacific sardine fishery via appropriate rulemaking and the fishery remains closed until it re-opens either per the allocation scheme or the beginning of the next fishing season. In accordance with § 660.509 the Regional Administrator shall publish a notice in the **Federal Register** announcing the date of the closure of the directed fishery for Pacific sardine.

The above in-season harvest restrictions are not intended to affect the prosecution of the live bait or tribal portions of the Pacific sardine fishery.

Classification

This action is required by 50 CFR 660.509 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 directed harvest of Pacific sardine. 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 and is necessary for the conservation and management of the Pacific sardine resource. A delay in effectiveness would cause the fishery to exceed the allocated in-season harvest level. These seasonal harvest levels are important mechanisms in preventing overfishing and managing the fishery at optimum yield. The established directed and incidental harvest allocations are designed to allow fair and equitable opportunity to the resource by all sectors of the Pacific sardine fishery and to allow access to other profitable CPS fisheries, such as squid and Pacific mackerel. Many of the same fishermen who harvest Pacific sardine rely on these other fisheries for a significant portion of their income.

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

Dated: September 18, 2014.

Emily H. Menashes,

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

[FR Doc. 2014–22570 Filed 9–18–14; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 130424402–4775–02]

RIN 0648–BD23

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; Amendment 105

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

ACTION: Final rule.

SUMMARY: NMFS publishes regulations to implement Amendment 105 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP). Amendment 105 and its implementing regulations establish a process for Western Alaska Community Development Quota (CDQ) groups, and cooperatives established under the Amendment 80 Program (Amendment 80 cooperatives), to exchange harvest quota from one of three flatfish species (flathead sole, rock sole, and yellowfin sole) for an equal amount of another of these three flatfish species, while maintaining total catch below acceptable biological catch (ABC) limits. This final rule modifies the annual harvest specifications process to allow the North Pacific Fishery Management Council (Council) to establish the maximum amount of flathead sole, rock sole, and yellowfin sole that may be exchanged based on social, economic, or biological considerations. This action is necessary to mitigate the operational variability, environmental conditions, and economic factors that may constrain the CDQ groups and Amendment 80 cooperatives from achieving, on a continuing basis, the optimum yield in the BSAI groundfish fisheries. This action is intended to promote the goals and objectives of the BSAI FMP, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and other applicable law.

DATES: *Effective* October 23, 2014.

ADDRESSES: Electronic copies of the Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and the Categorical Exclusion prepared for this action, the supplemental information report prepared for the final 2014 and 2015 harvest specifications (Harvest Specifications Supplemental Information Report (SIR)), and the Alaska Groundfish Harvest Specifications Final Environmental Impact Statement (Harvest Specifications EIS) may be obtained from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection of information requirements contained in this final rule may be submitted by mail to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; or by email to *OIRA_submission@omb.eop.gov* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Seanbob Kelly, 907–586–7228

SUPPLEMENTARY INFORMATION:

Regulatory Authority

Here, NMFS establishes regulations to implement Amendment 105 to the BSAI FMP. NMFS manages the U.S. groundfish fisheries of the Exclusive Economic Zone off Alaska under the BSAI FMP and the Fishery Management Plan for Groundfish of the Gulf of Alaska. The Council prepared the BSAI FMP pursuant to the Magnuson-Stevens Act and other applicable law. Regulations implementing the BSAI FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

Background

NMFS published the Notice of Availability for Amendment 105 in the **Federal Register** on June 13, 2014 (79 FR 33889), with a 60-day comment period that ended August 12, 2014. NMFS published a proposed rule for Amendment 105 in the **Federal Register** on June 30, 2014 (79 FR 36702). The 30-day comment period on the proposed rule ended July 30, 2014. NMFS received a total of five comment letters from three unique persons during the comment periods. The comment letters

contained 13 substantive comments. The Secretary of Commerce (Secretary) approved Amendment 105 on September 11, 2014, after taking into account all public comments, and determining that Amendment 105 is consistent with the BSAI FMP, the Magnuson-Stevens Act, and other applicable law. A summary of these comments and NMFS' responses are provided in the Comments and Responses section of this preamble.

Amendment 105 amends the BSAI FMP, and this final rule revises Federal regulations to:

- Define an amount of flathead sole, rock sole, and yellowfin sole in the BSAI, that is the difference between each species' annual ABC and annual total allowable catch (TAC), as the ABC surplus for that flatfish species.
- Allow the Council to recommend, and NMFS to specify, that some, none, or all of the ABC surplus for flathead sole, rock sole, or yellowfin sole in the BSAI be set aside each year through the annual harvest specifications process. The amount of ABC surplus set aside for a species is the ABC reserve.
- Allow CDQ groups and Amendment 80 cooperatives to apply to NMFS to receive a portion of the ABC reserve for flathead sole, rock sole, or yellowfin sole in the BSAI if they exchange a portion of their unused annual allocations of one or two flatfish species for an equal amount of another flatfish species (e.g., exchange an amount of unused annual allocation of flathead sole or allocations of flathead sole and rock sole for an equal amount of yellowfin sole ABC reserve). This exchange is defined as a Flatfish Exchange.
- Allow a Flatfish Exchange only if it would not cause a CDQ group or an Amendment 80 cooperative to exceed the ABC or ABC reserve amount for flathead sole, rock sole, or yellowfin sole.
- Limit the number of Flatfish Exchanges that each CDQ group or Amendment 80 cooperative could undertake to no more than three exchanges in a calendar year.

Background

A detailed review of the provisions of Amendment 105, the implementing regulations, and the rationale for these regulations is provided in the preamble to the proposed rule (79 FR 36702, June 30, 2014) and is not repeated here. The proposed rule is available from the NMFS Alaska Region Web site (see **ADDRESSES**). The preamble to this final rule provides a brief review of the regulatory changes made by this final rule to the management of flatfish fisheries in the BSAI.

The BSAI FMP and its implementing regulations require that the Council recommend and NMFS specify an overfishing level (OFL), an ABC, and a TAC for each stock or stock complex (i.e., species or species group) of groundfish on an annual basis. The OFLs, ABCs, and TACs for BSAI groundfish are specified through the annual harvest specifications process. The BSAI FMP defines the OFL as the level above which overfishing is occurring for a species or species group. NMFS manages fisheries in an effort to ensure that no OFLs are exceeded in any year. The BSAI FMP defines the ABC as the level of a species or species group's annual catch that accounts for the scientific uncertainty in the estimate of OFL and any other scientific uncertainty. The ABC cannot exceed the OFL, and NMFS attempts to manage all fisheries so that total catch does not exceed the ABC by monitoring fisheries and imposing necessary closures and other limitations. The TAC is the annual catch target for a species or species group, derived from the ABC by considering social and economic factors and management uncertainty. The BSAI FMP requires that the TAC must be set lower than or equal to the ABC.

Section 3.2.2.2 of the BSAI FMP and regulations at § 679.20(a)(2) require the sum of the TACs in all BSAI groundfish fisheries to be set within a range from 1.4 to 2 million metric tons (mt). This regulation implements the statutory requirement that ''[t]he optimum yield for groundfish in the Bering Sea and Aleutian Islands Management Area shall not exceed 2 million metric tons'' (see section 803(c) of Pub. L. 108–199). The Council may recommend TACs that are lower than the ABCs recommended by its Scientific and Statistical Committee if, among other reasons, setting TACs equal to ABCs would cause TACs to exceed 2 million mt. NMFS adheres to the statutory provision by limiting the sum of the TACs for all BSAI groundfish to 2 million mt. The Secretary will approve the final rule for the annual harvest specifications, which implements the Council's recommended OFLs, ABCs, and TACs, if she finds them consistent with the BSAI FMP, Magnuson-Stevens Act, and other applicable law. The final 2014 and 2015 harvest specifications provide additional detail on this process (79 FR 12108, March 04, 2014).

In the BSAI, flathead sole, rock sole, and yellowfin sole are harvested by vessels primarily using trawl gear. In these multi-species fisheries, operators target certain species of flatfish but also take a variety of species incidentally, including halibut and crab (species that are prohibited for harvest by vessels fishing for groundfish), and other groundfish that typically occupy the same habitat at the same times of year. The composition of groundfish species taken in the BSAI flatfish fisheries varies by season and fishing year.

Although there is a relatively high biomass of flathead sole, rock sole, and yellowfin sole, and relatively high ABCs, compared to most BSAI groundfish species, the TACs set for these three flatfish species have not been fully harvested in recent years. Therefore, the Council has recommended, and NMFS has approved, setting flathead sole, rock sole, and yellowfin sole TACs below the ABCs for those species. Some of the reasons for the relatively limited harvests of flathead sole, rock sole, and yellowfin sole include the uncertain nature of harvest in these multi-species flatfish fisheries, operational factors specific to the fisheries, and economic conditions. Additional detail describing harvests of flathead sole, rock sole, and yellowfin sole is in the preamble of the proposed rule and in Sections 1.5 and 1.6 of the RIR/IRFA prepared for this action.

During the annual harvest specification process, the Council and NMFS must apportion the flathead sole, rock sole, and yellowfin sole TAC according to specific regulatory requirements. Regulations require that the TACs for flathead sole, rock sole, and yellowfin sole be assigned to three broad categories: The CDQ Program, an incidental catch allowance, and the Amendment 80 Program and other non-Amendment 80 Program participants.

First, regulations require that NMFS reserve 10.7 percent of the TAC for each of these species to the CDQ Program (see regulations at §§ 679.20(b)(1)(ii)(C) and 679.31). The CDQ Program is an economic development program associated with federally managed fisheries in the BSAI. The CDQ Program is defined as a catch share program because it provides an exclusive harvest privilege (i.e., a CDQ allocation) to a specific fishery participant (i.e., a CDQ group) for its exclusive use. The CDQ Program allocates a portion of commercially important BSAI groundfish species, including flathead sole, rock sole, and yellowfin sole, to the six non-profit CDQ groups. The preamble to the proposed rule and Section 1.6.1 of the RIR/IRFA prepared for this action provide additional detail on the CDQ allocations of flathead sole, rock sole, and yellowfin sole to the CDQ Program as a whole, and to each CDQ

group. Currently, the six CDQ groups harvest their flathead sole, rock sole, and yellowfin sole CDQ allocations through contracts with Amendment 80 and non-Amendment 80 harvesting partners. Although the CDQ groups vary individually in the degree to which they harvest their flathead sole, rock sole, and yellowfin sole CDQ allocations, the six CDQ groups have not collectively fully harvested their allocations in recent years, as described in the preamble of the proposed rule and in Section 1.6.1 of the RIR/IRFA.

Second, the remaining TAC for each of these species is reduced by an incidental catch allowance (ICA) to account for incidental catch of flathead sole, rock sole and yellowfin sole by non-CDQ and non-Amendment 80 Program participants (see regulations at §§ 679.20(a)(8) and (10)). For the purposes of this proposed action, incidental catch refers to the flatfish caught and retained while targeting another species or species group. For example, NMFS must accommodate incidental catch of yellowfin sole in the Bering Sea pollock fishery by including an amount in the ICA that will accommodate incidental catch in that fishery; NMFS must also add an amount to the yellowfin sole ICA to accommodate incidental catch in all other non-CDQ and non-Amendment 80 fisheries.

Third, the remainder of the TAC is assigned to Amendment 80 Program and non-Amendment 80 Program participants for each species (see Table 33 to part 679). The yellowfin sole TAC remaining after establishing the CDQ reserve and the ICA is apportioned between the Amendment 80 sector and the BSAI trawl limited access sector (i.e., non-Amendment 80 trawl vessels) according to a specific formula that varies with the abundance of yellowfin sole (see Table 34 to part 679 for additional detail). The following section describes the Amendment 80 Program that receives most of the TACs for flathead sole, rock sole, and yellowfin sole and would benefit from this final rule.

Amendment 80 to the BSAI FMP was implemented in 2008 with a final rule published in 2007 (72 FR 52668, September 14, 2007) and is commonly known as the Amendment 80 Program. Among other measures, the Amendment 80 Program authorized the allocation of six BSAI groundfish species to trawl catcher/processors that are not specifically authorized to conduct directed fishing for Bering Sea pollock under the American Fisheries Act of 1998 (Pub. L. 105–227, Title II of Division C). The Amendment 80 Program encourages the formation of cooperatives and the development of cooperative fishing practices to reduce discards, reduce bycatch, and improve the value of Amendment 80 species harvests. The final rule implementing Amendment 80 provides additional detail on the Amendment 80 Program.

Although the Amendment 80 Program has met many of its harvest goals, Amendment 80 cooperatives have found it difficult to predict the amount of flathead sole, rock sole, and yellowfin sole that can be taken when specifically targeting those species, while ensuring adequate cooperative quota (CQ) remains to accommodate incidental catch of these species (e.g., an Amendment 80 cooperative must ensure that it has adequate yellowfin sole CQ to accommodate both a targeted yellowfin sole fishery and all incidental harvest of yellowfin sole in all other BSAI fisheries). The preamble of the proposed rule and Section 1.5.3 of the RIR/IRFA prepared for this action provide additional detail on specific conditions that can constrain the full use of a cooperative's flathead sole, rock sole, and yellowfin sole CQ.

The factors that limit Amendment 80 cooperatives from fully harvesting their allocations also apply to the CDQ groups. Both Amendment 80 vessels and non-Amendment 80 vessels fishing CDQ allocations are affected by the same uncertain operational conditions (e.g., difficultly predicting harvest rates of flatfish in target and non-target fisheries), unpredictable environmental conditions, and market conditions that can limit harvest. Recent harvests of flathead sole, rock sole, and yellowfin sole by CDQ groups and Amendment 80 cooperatives have been substantially below the TACs for those species, as described in the preamble of the proposed rule and Sections 1.5 and 1.6 of the RIR/IRFA. This indicates that existing management measures applicable to Amendment 80 vessels and non-Amendment 80 vessels fishing CDQ allocations may not provide the flexibility needed to allow more complete harvest.

This final rule provides additional flexibility to existing management practices and is appropriate because CDQ groups and Amendment 80 cooperatives are participating in catch share fisheries that are capable of limiting their overall harvests within specific catch limits. In addition, CDQ groups and Amendment 80 cooperatives are subject to strict management controls that prohibit fishing beyond these catch limits (see the preamble of the proposed rule for additional detail).

This action is also intended to preserve the Council's and NMFS' ability to consider a broad range of factors when determining how much flexibility to provide CDQ groups and Amendment 80 cooperatives through the annual harvest specifications process. For example, the Council could recommend, and NMFS could propose, setting the ABC reserve below the ABC surplus for flathead sole, rock sole, and yellowfin sole to account for any management uncertainty as a precautionary measure. Amendment 105 and this final rule promote the Council's and NMFS' ability to ensure a transparent annual harvest specifications process and articulate the criteria by which the Council and NMFS are making those decisions. This action is designed to provide the tools necessary to maximize the sustainable harvest of flathead sole, rock sole, and yellowfin sole, in order to achieve the optimum yield in the BSAI groundfish fisheries.

Implementation of This Action

This final rule establishes an accounting methodology to provide CDQ groups and Amendment 80 cooperatives with additional opportunities to fully harvest flathead sole, rock sole, or yellowfin sole allocations, while ensuring ABCs cannot be exceeded. Amendment 105 and its implementing regulations establish regulatory limits to ensure that the individual ABCs for flathead sole, rock sole, and yellowfin sole will not be exceeded, while creating the opportunity for a more complete harvest of one or more of these flatfish species. Although an individual TAC for these species (not ABC) may be exceeded, this action establishes a regulatory mechanism designed to prevent the sum of all TACs for flathead sole, rock sole, and yellowfin sole from being exceeded, thereby ensuring the sum of BSAI groundfish TACs does not exceed 2 million mt. This final rule defines new terms to provide the flexibility needed to provide more harvest opportunities for flathead sole, rock sole, and yellowfin sole—the ABC surplus, ABC reserve, CDQ ABC reserve, Amendment 80 ABC reserve, and Flatfish Exchange. This final rule also describes the process CDQ groups and Amendment 80 cooperatives would use to access the CDQ or Amendment 80 ABC reserves.

This final rule defines the ABC surplus for flathead sole, rock sole, and yellowfin sole in the BSAI as the difference between each species' annual ABC and TAC. Under this final rule, the ABC surplus would be specified in the annual harvest specifications. Under

this final rule, the Council continues to set the OFLs, ABCs, and TACs, and allocations of flathead sole, rock sole, and yellowfin sole in the annual harvest specifications process. And once those amounts are determined, the annual harvest specifications would also specify an ABC surplus for each flatfish species. The ABC surplus would represent the maximum additional amount of flathead sole, rock sole or yellowfin sole that could be harvested above the TAC. However, the actual amount available for harvest would be the ABC reserve, which can be equal to or less than the ABC surplus.

This final rule defines ABC reserve flathead sole, rock sole, and yellowfin sole in the BSAI as an amount equal to, or less than, the ABC surplus, depending on whether the Council and NMFS reduce the surplus for social, economic, or ecological considerations during the determination of the annual harvest specifications. The ABC reserve would be set after consultation with the Council. Unless the Council recommends otherwise, or NMFS determines there is a need to set the ABC reserve below the ABC surplus, NMFS would set the ABC reserve equal to the ABC surplus for each species. Setting the ABC reserve as a portion of the ABC surplus, or equal to the ABC surplus, would ensure that the total amount of each species that is accessible would not exceed the ABC. The Council or NMFS could choose to establish a precautionary buffer to accommodate uncertainty in harvests, or to address a range of socioeconomic considerations. For example, the Council may be concerned that setting an ABC reserve for a given species at a specific harvest level could increase supply, and thereby reduce demand and reduce the ex-vessel value of that flatfish species. These effects could affect CDQ groups, Amendment 80 cooperatives, and other fishery participants differently. The Council and NMFS may evaluate these socioeconomic considerations when setting the ABC reserve. The specific recommendation to set an ABC reserve below the ABC surplus for a specific flatfish species would be described in the annual harvest specifications. Once the ABC reserve is identified for a flatfish species, the ABC reserve for that flatfish species is then apportioned among CDQ groups and Amendment 80 cooperatives. NMFS publishes the allocation of ABC reserve available to CDQ groups and Amendment 80 cooperatives in the proposed and final harvest specifications.

This final rule defines the CDQ ABC reserve as 10.7 percent of the amount of the flathead sole, rock sole, or yellowfin sole ABC reserve that is allocated among CDQ groups as annually calculated according to the methods described at § 679.31(b)(4). The amount of the ABC reserve assigned as the CDQ ABC reserve is the same as the proportion of the TAC available to the CDQ Program.

This final rule defines the Amendment 80 ABC reserve as the amount of the flathead sole, rock sole, or yellowfin sole ABC reserve that remains for each species after designating the amount assigned to the CDQ ABC reserves. Therefore, the Amendment 80 ABC reserve is 89.3 percent of the amount of the flathead sole, rock sole, or yellowfin sole ABC reserve. The Amendment 80 ABC reserve would be allocated among Amendment 80 cooperatives annually as calculated according to the methods described at § 679.91(i)(2).

This final rule also establishes the method, a Flatfish Exchange, for CDQ groups and Amendment 80 cooperatives to exchange unused CDQ allocations for a proportion of the CDQ ABC reserve, or unused Amendment 80 cooperative CQ for a proportion of the Amendment 80 ABC reserve. This final rule requires that a CDQ group or an Amendment 80 cooperative submit a Flatfish Exchange Application to NMFS. That application must be approved by NMFS, and revised TACs must be published in the **Federal Register**, before unused CDQ or CQ would be exchanged for a portion of its CDQ ABC reserve or Amendment 80 reserve. NMFS' approval of a Flatfish Exchange Application is necessary to ensure that ABCs are not exceeded. NMFS has the authority to disapprove an application if it is likely that an ABC will be exceeded.

This final rule defines a Flatfish Exchange in § 679.2. Each Flatfish Exchange is a transfer of unused CDQ, or Amendment 80 CQ, of flathead sole, rock sole, or yellowfin sole in the BSAI for an equivalent amount (in metric tons) of CDQ ABC reserve or Amendment 80 ABC reserve, respectively, of flathead sole, rock sole, or yellowfin sole in the BSAI, as described in a notice of adjustment or apportionment in the **Federal Register**. This final rule establishes regulations to describe the Flatfish Exchange Application, and application approval process. NMFS will process any completed Flatfish Exchange Application submitted by a CDQ group or Amendment 80 cooperative. The Flatfish Exchange Application must specify the amounts of flathead sole, rock sole, and yellowfin sole to be exchanged, and certify the information submitted is true, correct, and complete. The specific requirements of the Flatfish Exchange Application are provided on the form posted at the Alaska Region Web site: *http://alaskafisheries.noaa.gov.* All Flatfish Exchange Applications must be submitted electronically through the Alaska Region Web site: *http://alaskafisheries.noaa.gov.*

NMFS' approval of a Flatfish Exchange Application is required prior to the use of the CDQ or CQ subject to the Flatfish Exchange. NMFS will approve the Flatfish Exchange Application if: (1) The CDQ group or Amendment 80 cooperative exchanging flathead sole, rock sole, or yellowfin sole has sufficient CDQ ABC reserves or Amendment 80 ABC reserves of the flatfish species for which it is requesting to increase its CDQ or CQ; (2) the CDQ group or Amendment 80 cooperative requesting the exchange of flathead sole, rock sole, yellowfin sole exchanges an equal amount of unused CDQ allocation or unused CQ; and (3) the CDQ group or Amendment 80 cooperative has not already received three Flatfish Exchanges. Any unused CDQ allocation can be exchanged only for CDQ ABC reserve, and unused CQ can be exchanged only for Amendment 80 ABC reserve. Furthermore, a CDQ group can submit a Flatfish Exchange Application only for an amount of CDQ ABC reserve assigned to that CDQ group, and an Amendment 80 cooperative can submit a Flatfish Exchange Application only for an amount of Amendment 80 ABC reserve assigned to that Amendment 80 cooperative.

This final rule requires that no Flatfish Exchange takes effect until notification has been published in the **Federal Register** with a statement of the findings on which the apportionment or adjustment is based. This provision provides clear notification to the public and the affected CDQ group or Amendment 80 cooperative that the Flatfish Exchange Application has been approved and displays the resulting adjustment in CDQ ABC reserve and CDQ allocation for that CDQ group, or the resulting adjustment in Amendment 80 ABC reserve and CQ for that Amendment 80 cooperative. An approved Flatfish Exchange is effective on the date of publication of the notice of adjustment or apportionment in the **Federal Register**.

No Flatfish Exchange can result in an ABC reserve being exceeded because NMFS must consider flathead sole, rock sole, and yellowfin sole catch prior to any Flatfish Exchange approval. This final rule ensures that the ABC for each flatfish species is no more likely to be exceeded than in the absence of Amendment 105. This final rule limits

a CDQ group or Amendment 80 cooperative to no more than three Flatfish Exchanges during a calendar year to limit the administrative burden associated with Flatfish Exchanges, while still providing adequate opportunity for additional harvest opportunities.

Changes From the Proposed Rule

NMFS made one change to this final rule in response to public comments. NMFS removed the proposed regulations at § 679.5(s)(7) to require each Amendment 80 cooperative that receives CQ to submit a Preliminary Amendment 80 Cooperative Flatfish Exchange Report to the Council by December 1 each year. As described on page 36714 of the preamble to the proposed rule (June 30, 2014, 79 FR 36702), NMFS proposed to require Amendment 80 cooperatives to annually submit a report reviewing the cooperative's use of Amendment 80 ABC reserve for flathead sole, rock sole, and yellowfin sole.

As proposed, each Amendment 80 cooperative would have been required to report (1) the number of vessels used to harvest its CQ, (2) the number of Flatfish Exchanges and dates those exchanges were approved, (3) the types of and amounts of CQ and Amendment 80 ABC reserves utilized, and (4) the dates, types, and amounts of inter-cooperative CQ transfers. As described in the response to Comment 8, NMFS already collects each data element of the proposed reporting requirement and could provide the information to the Council and the public. NMFS has removed the requirement for each Amendment 80 cooperative to submit a Preliminary Amendment 80 Cooperative Flatfish Exchange Report in this final rule because it would be an unnecessary reporting burden on Amendment 80 cooperatives.

NMFS will be able to provide the information proposed in the Preliminary Amendment 80 Cooperative Flatfish Exchange Report to the Council at its December Council meeting prior to the Council making recommendations for ABC, ABC surplus, and ABC reserve for flathead sole, rock sole, and yellowfin sole. This information will allow the Council to assess the use of Flatfish Exchanges and CQ, and weigh the potential socioeconomic impact of Flatfish Exchanges before establishing the ABC reserve for flathead sole, rock sole, and yellowfin sole. See the response to Comment 8 for additional detail.

Comments and Responses

During the public comment periods for the Notice of Availability for Amendment 105 and the proposed rule to implement Amendment 105, NMFS received five comment letters from three unique persons (two from different members of the public and three from the same industry representative) that contained thirteen substantive comments. NMFS' responses to these comments are presented below.

Comment 1: One commenter expressed support for this action.

Response: NMFS acknowledges this comment.

Comment 2: The commenter expressed general disapproval with fisheries management.

Response: NMFS acknowledges this comment.

Comment 3: One commenter suggested that this action would result in overfishing in this fishery and adversely affect marine mammals.

Response: NMFS disagrees. Sections 1.5.1 and 1.6.1 of the RIR prepared for this action and the background section of the preamble to the proposed rule note that the flatfish stocks are not overfished and overfishing is not occurring in BSAI groundfish fisheries. The Council typically recommends, and NMFS implements, flatfish TACs that are lower than the ABCs. Moreover, flatfish catch is consistently below TAC for both the Amendment 80 sector and the CDQ fisheries for reasons described in more detail in the RIR/IRFA prepared for this action (See **ADDRESSES**). This final rule will provide CDQ groups and Amendment 80 cooperatives with additional opportunities to fully harvest flathead sole, rock sole, or yellowfin sole allocations, while ensuring ABCs for each of those species cannot be exceeded. This final rule will not affect the sustainability or catch levels of groundfish in the BSAI, because the fishery will continue to be managed under the current harvest specifications process. Similarly, this final action will generally improve the likelihood of achieving and maintaining, on a continuing basis, the optimum yield (OY) of the BSAI groundfish fisheries, to the extent that it provides an opportunity for increased use of available TAC. This action will not increase the likelihood that ABCs or the 2 million mt OY limit for the BSAI groundfish fisheries would be exceeded.

NMFS and the Secretary of Commerce have determined that fishing activities conducted under this rule would have no adverse impact on marine mammals. As described in the Categorical Exclusion (See **ADDRESSES**) prepared for this action, Amendment 105 and its implementing regulations make only minor revisions to the existing regulations which will have no effects on marine mammals beyond those already expected from the BSAI groundfish fisheries as described in the Harvest Specifications EIS and SIR (See **ADDRESSES**).

Comment 4: This action should only be implemented if it is paired with regulations that strengthen accountability and enforcement for the participants that benefit from the flatfish flexibility program.

Response: NMFS disagrees that additional monitoring and enforcement regulations are needed to ensure compliance with Amendment 105. As described in this preamble, NMFS prohibits any CDQ group or Amendment 80 cooperative from exceeding its allocation of CDQ or CQ (see regulations at § 679.7(d)(3) and (o)(4)(iv)). Moreover, vessels harvesting CDQ and CQ are already subject to 100% observer coverage which includes at least two observers for each day that the vessel is used to catch, process, or receive groundfish harvested in a federally managed or parallel groundfish fishery (see regulations at § 679.51(a)(2)(vi)(C)). Vessels harvesting CDQ and CQ are also subject to additional monitoring and enforcement provisions, including the use of vessel monitoring systems, at-sea scales, and daily reporting requirements (see regulations at §§ 679.51(a) and 679.5(n) and (s)).

As noted in this preamble, each Flatfish Exchange must be approved by NMFS and published in the **Federal Register** prior to any transfer (see regulations at § 679.4(p)). NMFS will have the authority to disapprove an application if NMFS determines it is likely that the CDQ group or Amendment 80 cooperative does not have (1) an adequate amount of unused CDQ or CQ remaining, or (2) the CDQ group or Amendment 80 cooperative does not have adequate ABC reserve remaining. NMFS will review each Flatfish Exchange Application and consider approval or disapproval in light of incidental catch levels occurring in other groundfish fisheries. NMFS will not approve any Flatfish Exchange that could result in exceeding an ABC or ABC reserve for a species, though such a situation is highly unlikely given methods in place to track harvest of BSAI groundfish.

Comment 5: The proposed rule states that the ABC reserve would be set after consultation with the Council or could be reduced if NMFS determines there is a need to set the ABC reserve below the

ABC surplus. The Council motion and RIR prepared for this action did not contemplate that NMFS could independently determine ABC reserve levels. While NMFS may have a legitimate need to set the ABC reserve below the ABC surplus, we encourage NMFS to work with Amendment 80 cooperatives to address any concerns it has with setting the ABC reserve.

Response: NMFS intends to coordinate and consult with the Council to determine the appropriate level of the ABC reserve during the annual specifications process. NMFS anticipates that it can effectively communicate with Amendment 80 cooperatives, CDQ groups, and the Council to determine the appropriate ABC reserve. However, NMFS has the authority and responsibility to ensure that ABCs are not exceeded. This authority and responsibility is included in the FMP and regulations at § 679.20. Therefore, NMFS will not modify this final rule to preclude the ability for NMFS to set an ABC reserve at a level that differs from the one recommended by the Council if NMFS determines that a different ABC reserve is necessary and appropriate.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify annually the TAC for each target species category. Regulations at § 679.20(c)(1) further require NMFS to publish proposed harvest specifications in the **Federal Register** and solicit public comments on proposed annual TACs and apportionments thereof, prohibited species catch allowances, prohibited species quota reserves established by § 679.21, seasonal allowances of pollock, Pacific cod, and Atka mackerel TAC, American Fisheries Act allocations, Amendment 80 allocations, and CDQ reserve amounts established by § 679.20(b)(1)(ii). Under regulations at § 679.20(c)(3), NMFS publishes the final harvest specifications after (1) considering comments received within the comment period, (2) consulting with the Council at its annual December meeting, and (3) considering information presented in the Supplementary Information Report that assesses the need to prepare a Supplemental Alaska Groundfish Harvest Specifications Final Environmental Impact Statement and the final Stock Assessment and Fishery Evaluation reports prepared for the BSAI groundfish fisheries. NMFS will approve the Council's recommended OFLs, ABCs, and TACs if NMFS finds them consistent with the FMP, MSA, and other applicable law. However, NMFS may determine that a Council recommendation, including a Council recommendation for an ABC reserve, is not consistent with the FMP, MSA, and other applicable law. Therefore, removing a specific regulatory provision that would allow NMFS to establish an ABC reserve that may differ from the one recommended by the Council would be contrary to existing authority established by the MSA, FMP, and regulations. The final 2014 and 2015 harvest specifications provide additional detail on this process (79 FR 12108, March 4, 2014).

Comment 6: A representative for Amendment 80 vessels supported the rule and noted that the rule will provide CDQ groups and Amendment 80 vessels with the same harvesting flexibility, which he believes will result in greater demand for and additional harvesting of CDQ quota.

Response: NMFS agrees that CDQ groups would have the same opportunity as the Amendment 80 cooperatives to access the ABC surplus and ABC reserve, and consequently would also be able to benefit from the flexibility in choice of target flatfish afforded by Amendment 105 and its implementing regulations.

NMFS acknowledges the commenter's assertion that this action will result in greater harvesting of CDQ quota of flatfish. NMFS cannot say, however, whether this will actually occur because, as noted in is section 1.8.2.2 of the RIR/IRFA prepared for this action, it is impossible to quantitatively assess the impacts of the this action on the values of CDQ allocations of flathead sole, rock sole, and yellowfin sole. A qualitative assessment suggests that as the supply of these three species increases for the Amendment 80 sector, the demand for leasing CDQ flatfish quota would decrease, along with the lease rates. The risk of this decline may exist only in the short term because, over the longer term, the demand for CDQ flatfish quota is likely to increase as more efficient vessels specifically designed for participation in the BSAI trawl fisheries replace the aging fleet, and Amendment 80 allocations are fully utilized. As Amendment 80 vessels increase their efficiency, they will continue to seek other fishing opportunities, such as leasing CDQ quota. Further, while the CDQ groups have leased their flatfish quota to Amendment 80 vessels to harvest, other partners have recently entered the market, which may lead to increased competition for CDQ leases.

As noted on page 39708 of the proposed rule, this action is not intended to resolve the complex issues that have constrained the CDQ groups and Amendment 80 cooperatives from fully harvesting their flatfish allocations. This proposed action is intended to provide the flexible management necessary to mitigate a diverse range of conditions that may limit catch of flathead sole, rock sole, and yellowfin sole. The Council and NMFS expect that the regulatory tools implemented in this final rule will promote increased harvest of CDQ and CQ allocations.

Comment 7: The preamble suggests that NMFS is in the process of interpreting Magnuson-Stevens Act confidentiality provisions, but that the current interpretation limits disclosure of certain information. These provisions were implemented by Congress to protect the confidentiality of data submitters so that business or trade secrets are not revealed. We feel that limiting data disclosure to aggregations of three vessels or more adequately protects the interest of submitters and provides information to the Council to assess the effects of this rule.

Response: NMFS acknowledges this comment and notes that this final rule would not require Amendment 80 cooperatives to submit confidential information to the Council or the public. Moreover, NMFS will not disclose data to the Council or the public that would be considered confidential, consistent with section 402(b) of the Magnuson-Stevens Act and applicable agency regulations and policies regarding any confidential information. The scope of Amendment 105 and this rule do not modify existing data disclosure procedures.

Comment 8: All of the information to be submitted in the Preliminary Amendment 80 Flatfish Exchange Report is available to NMFS. NMFS could therefore provide the Council with this information at its December meeting instead of requiring Amendment 80 cooperatives to submit a separate report to the Council by December 1 of each year. The proposed annual reporting requirement creates an unnecessary reporting burden, increases costs for Amendment 80 cooperatives, and should be removed.

Response: NMFS agrees and has removed from the final rule the requirement for Amendment 80 cooperatives to submit a Preliminary Amendment 80 Flatfish Exchange Report to the Council by December 1 every year. See the ''Changes from the Proposed Rule'' section above in this preamble for additional detail.

Comment 9: Proposed regulations at § 679.5(s)(7)(iii) describe information requirements for the Preliminary Amendment 80 Flatfish Exchange Report as all of the information required

on the Preliminary Amendment 80 Flatfish Exchange Report form and all required additional documentation. The form was not available for review, so it is difficult to comment on this proposed regulation. However, the requirements seem vague and we request that the final rule clarify the reporting requirements.

Response: NMFS provided the form to the commenter and the public for review prior to the end of the public comment period on this proposed rule. However, NMFS has removed the Preliminary Amendment 80 Flatfish Exchange Report and the accompanying form from this final rule (see Comment 8). Therefore, this comment is no longer applicable to this final rule.

Comment 10: Block B of the Preliminary Amendment 80 Flatfish Exchange Report form requires information about Amendment 80 Flatfish Exchanges. The headings in Block B are titled: ''Species Exchanged Into Cooperative Quota'' and ''Species Exchanged Out of Reserves''. These headings are asking for the same information. As described in the proposed regulations, an Amendment 80 cooperative would be exchanging CQ of one species for CQ of another species. The current form confuses these two exchanges and should be corrected.

Response: NMFS acknowledges this comment and notes that this final rule does not require Amendment 80 cooperatives to provide a Preliminary Amendment 80 Flatfish Exchange Report, as described in more detail in the response to Comment 8. Therefore, this comment is no longer applicable to this final rule.

Comment 11: Block A of the Flatfish Exchange Application form asks whether the exchange is CDQ or Amendment 80. Block B also asks for the same information in both the ''Species Exchanged In'' and ''Species Exchanged Out'' columns. This suggests that an Amendment 80 cooperative may exchange CDQ for Amendment 80 CQ. We do not believe this was the intent of the proposed rule, and should be corrected. We believe it's only necessary to state whether the exchange is CDQ or Amendment 80 in Block A.

Response: NMFS agrees and has revised Block A and Block B of the Flatfish Exchange Application form accordingly.

Comment 12: The Flatfish Exchange Application form instructions state that the exchange ''will be exchanged as of the date NMFS approves the exchange application''. The instructions also state ''No exchange, adjustment, apportionment of flatfish may take effect until NMFS publishes notification in the **Federal Register**''. NMFS should clarify if the ''date NMFS approves the exchange application'' is the same date that ''NMFS publishes notification in the **Federal Register**.'' Also, NMFS should clarify the process they will follow to ensure there is no delay in reviewing and approving the Flatfish Exchange Application.

Response: NMFS agrees and has revised the Flatfish Exchange Application form instructions to clarify that a Flatfish Exchange is effective on the date that NMFS publishes notification in the **Federal Register**. Flatfish Exchanges are not effective upon approval of a Flatfish Exchange Application. As described on page 36712 of the preamble to the proposed rule, Section 1.4.2 of the RIR/IRFA prepared for this action, and this final rule preamble, each Flatfish Exchange Application received by NMFS must be approved by NMFS, and revised TACs must be published in the **Federal Register**, before unused CDQ or CQ could be exchanged for a portion of its CDQ ABC reserve or Amendment 80 reserve. NMFS' approval of a Flatfish Exchange Application is necessary to ensure that ABC's are not exceeded. NMFS will disapprove any application that could result in exceeding an ABC or ABC reserve for a species. NMFS will make every effort to review each Flatfish Exchange Application as expeditiously as possible while ensuring that it fully considers the requested exchange to ensure an ABC or ABC reserve to be exceeded.

Comment 13: The commenter suggested that the proposed rule did not meet plain English standards for clearly written regulations.

Response: NMFS disagrees. The preamble to proposed rule used plain language to describe the proposed regulatory text. The preamble to the proposed rule includes a *Summary of Regulatory Changes* proposed in a bulleted list on page 36709 that provides a broad overview of the proposed regulatory changes. NMFS provided a thorough description of the rationale for all the relevant components and effects of this action as clearly as possible in light of the complex nature of fishery management programs. The proposed regulations, the preamble to the proposed rule, and this final rule are subject to an extensive review process, including legal review, to ensure that documents are consistent the Magnuson-Stevens Act and other applicable law including Executive Orders (E.O.) 12866 and12988. These two Executive Orders emphasize the need for plain language. For example E.O. 12866 requires that regulations be ''simple and easy to understand, with the goal of minimizing uncertainty and litigation . . .'' (Sec. 1, Par. (b)(12)) and E.O. 12988 requires that each regulation specify its effect ''in clear language''. (Sec. 3 Par. (b)(2)).

Summary of Regulatory Changes

Amendment 105 and this final rule modify existing regulatory text at 50 CFR part 679 as follows:

- Add definitions for ''ABC reserve,'' ''ABC surplus,'' ''Amendment 80 ABC reserve,'' ''CDQ ABC reserve,'' and ''Flatfish Exchange'' to § 679.2.
- Add § 679.4(p) to establish the Flatfish Exchange Application requirements and annual limitations on the number of Flatfish Exchanges.
- Add § 679.20(b)(1)(iii) to establish the ABC reserves, CDQ ABC reserves, and Amendment 80 ABC reserves as part of the general limitations.
- Revise § 679.20(c)(1)(iv) to include Flatfish Exchange specifications in the annual proposed groundfish harvest specifications.
- Revise § 679.20(c)(3)(iii) to include Flatfish Exchange specifications in the annual final groundfish harvest specifications.
- In § 679.31, revise the headings of paragraphs (a) and (b) to be consistent with this Amendment 105.
- Add § 679.31(a)(5) to establish the CDQ ABC reserve as part of the CDQ allocations.
- Add § 679.31(b)(4) to allocate CDQ ABC reserves among CDQ groups.
- Add § 679.31(d) to allow CDQ groups to access the CDQ ABC reserves.
- Add § 679.91(i) to establish the Amendment 80 ABC reserves as annual harvest privileges allocated to Amendment 80 cooperatives, and to allow Amendment 80 cooperatives to access the Amendment 80 ABC reserves.

Classification

The Administrator, Alaska Region, NMFS, determined that Amendment 105 to the BSAI FMP is necessary for the conservation and management of the BSAI groundfish fishery and that it is consistent with the BSAI FMP, the Magnuson-Stevens Act, and other applicable laws.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis (FRFA), the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall

explain the actions a small entity is required to take to comply with a rule or group of rules. The preamble to the proposed rule and this final rule serve as the small entity compliance guide. This action does not require any additional compliance from small entities that is not described in the preamble. Copies of this final rule are available from NMFS at the following Web site: *http://alaskafisheries.noaa.gov.*

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866.

Final Regulatory Flexibility Analysis

Section 604 of the Regulatory Flexibility Act (RFA) requires that, when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code, after being required by that section, or any other law, to publish a general notice of proposed rulemaking, the agency shall prepare a final regulatory flexibility analysis.

Section 604 describes the contents of a FRFA: (1) A statement of the need for, and objectives of, the rule; (2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

The ''universe'' of entities to be considered in a FRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the final rule. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof (e.g., user group, gear type, geographic area), that segment would be considered the universe for purposes of this analysis.

The Small Business Administration (SBA) has established size standards for all major industry sectors in the U.S., including commercial finfish harvesters (NAICS code 114111), commercial shellfish harvesters (NAICS code 114112), other commercial marine harvesters (NAICS code 114119), for-hire businesses (NAICS code 487210), marinas (NAICS code 713930), seafood dealers/wholesalers (NAICS code 424460), and seafood processors (NAICS code 311710). A business primarily involved in finfish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual gross receipts not in excess of $20.5 million, for all its affiliated operations worldwide. For commercial shellfish harvesters, the same qualifiers apply, except the combined annual gross receipts threshold is $5.5 million. For other commercial marine harvesters, for-hire fishing businesses, and marinas, the same qualifiers apply, except the combined annual gross receipts threshold is $7.5 million.

A business primarily involved in seafood processing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual employment, counting all individuals employed on a full-time, part-time, or other basis, not in excess of 500 employees for all its affiliated operations worldwide. For seafood dealers/wholesalers, the same qualifiers apply, except the employment threshold is 100 employees. In determining a concern's number of employees, SBA counts all individuals employed on a full-time, part-time, or other basis. This includes employees obtained from a temporary employee agency, professional employee organization or leasing concern. SBA will consider the totality of the circumstances, including criteria used by the IRS for Federal income tax purposes, in determining whether individuals are employees of a concern. Volunteers (*i.e.,* individuals who receive no compensation, including no in-kind compensation, for work performed) are not considered employees. Where the size standard is number of employees, the method for determining a concern's size includes the following principles: (1) The average number of employees of the concern used (including the employees of its domestic and foreign affiliates) based upon numbers of employees for each of the pay periods for the preceding completed 12 calendar months; (2) part-time and temporary employees are counted the same as full-time employees.

Need for and Objectives of This Action

A statement of the need for, and objectives of, the rule is contained in the preamble to this final rule and is not repeated here.

Summary of Significant Issues Raised During Public Comment

NMFS published a proposed rule on June 30, 2014 (79 FR 36702). An initial regulatory flexibility analysis (IRFA) was prepared and summarized in the ''Classification'' section of the preamble to the proposed rule. The comment period closed on July 30, 2014. NMFS received 5 letters of public comment on the proposed rule. These comment letters did not address the IRFA or the economic impacts of the rule generally. The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule.

Number and Description of Small Entities Regulated by This Action

CDQ groups and Amendment 80 cooperatives are directly regulated through this final action through their allocations of harvesting privileges for flathead sole, rock sole, and yellowfin sole.

Since 2011, all vessels and companies participating in the Amendment 80 sector have been affiliated with one of two Amendment 80 cooperatives, the Alaska Seafood Cooperative or the Alaska Groundfish Cooperative. The IRFA classified all of the entities participating in Amendment 80 cooperatives as large entities, either by virtue of their own gross revenues or by virtue of their affiliation with other large entities through their cooperative membership. The small entity determinations reported in the IRFA for this action have been reviewed for compliance with recent revisions to Small Business Administration thresholds for identifying small entities (79 FR 33647, June 12, 2014). No changes in the small entity count analysis were necessary for this FRFA.

The six CDQ groups are all small entities by virtue of their non-profit

status. These groups include Aleutian Pribilof Island Community Development Association, Bristol Bay Economic Development Corporation, Central Bering Sea Fishermen's Association, Coastal Villages Region Fund, Norton Sound Economic Development Corporation, and Yukon Delta Fisheries Development Association. Each of these groups is organized as an independently owned and operated not-for-profit entity and none is dominant in its field; consequently, each is a ''small entity'' under the RFA.

All six CDQ groups annually receive groundfish, halibut, and crab CDQ allocations. These groups participate, either directly or indirectly, in the commercial harvest of these allocations. Commercially valuable allocations include (among others) Alaska pollock, Pacific cod, sablefish, Pacific halibut, Greenland turbot, Atka mackerel, various flatfish species, as well as king and Tanner crab. CDQ groups receive royalties from the successful harvest of CDQ by commercial fishing companies, as well as access to employment and training opportunities for their communities' residents. Royalties and income from CDQ harvesting activities are used to fund economic development projects in CDQ communities. In 2011, the six CDQ groups earned approximately $311.5 million in royalties (i.e., gross revenues) from the harvest of CDQ allocations. CDQ Program activities are discussed in detail in Section 1.6 of the RIR/IRFA prepared for this action.

Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action is projected to have a negligible impact on the recordkeeping and reporting requirements of CDQ groups (i.e., the directly regulated small entities) participating in the BSAI groundfish fisheries. The decision to submit a Flatfish Exchange Application is entirely voluntary on the part of all affected entities. If a CDQ group chooses to submit a Flatfish Exchange Application, it will need to submit the information required. The information required in a Flatfish Exchange Application is similar to the information already required by for transfers of CDQ allocations among CDQ groups (see regulations at § 679.5(n)).

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

A FRFA also requires a description of the steps the agency has taken to minimize the significant impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative (Alternative 3 as modified by Option 1, described below) adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency that affect the economic impact on small entities was rejected. The suite of potential actions includes three alternatives and associated options. A detailed description of these alternatives and options is provided in Section 1.4 of the RIR/IRFA prepared for this action.

Alternative 1 is the status quo, and does not provide additional harvesting flexibility for flathead sole, rock sole, or yellowfin sole to CDQ groups. Alternative 2 would establish a CDQ ABC reserve for flathead sole, rock sole, or yellowfin sole that is allocated among CDQ groups equal to 10.7 percent of the ABC surplus for each species. Alternative 3 would allow the Council or NMFS to establish a CDQ ABC reserve for flathead sole, rock sole, or yellowfin sole that is allocated among CDQ groups that may be less than or equal to 10.7 percent of the ABC surplus for each species after considering socioeconomic or biological considerations.

Alternative 2 is less restrictive than the preferred alternative, and thus has fewer adverse impacts on the directly regulated CDQ groups. While Alternative 2 may be less restrictive to CDQ groups, Alternative 3 as modified by Option 1 was adopted because it provides the Council flexibility to address socioeconomic or biological considerations during the annual harvest specifications process. In order to meet the conservation and management objectives of the Magnuson-Stevens Act, the BSAI FMP, and this final action, the Council and NMFS may deem it appropriate to set the ABC reserve below the ABC surplus to accommodate potential harvests of non-target species greater than the incidental catch allowance. Similarly, the Council may recommend establishing an ABC reserve less than the ABC surplus to accommodate market conditions.

The Council also considered three options that could apply to either Alternative 2 or Alternative 3; however, options 2 and 3 are mutually exclusive because Option 2 would not allow participants to receive additional yellowfin sole and Option 3 limits the amount (mt) of additional yellowfin sole that could be accessed by each participant. Option 1 would establish an ABC surplus, ABC reserve, and CDQ ABC reserve for flathead sole, rock sole, and yellowfin sole, but limit the number of Flatfish Exchanges to no more than three Flatfish Exchanges per CDQ group per calendar year. Option 2 would create an ABC surplus, ABC reserve, and CDQ ABC reserve only for flathead sole and rock sole. Option 3 would limit the maximum amount of the ABC surplus, ABC reserve, and CDQ ABC reserve for yellowfin sole available to CDQ groups. Options 2 and 3 are more restrictive than Option 1 and provide fewer opportunities for CDQ groups to use Flatfish Exchanges to maximize their harvests, particularly their harvests of yellowfin sole. Therefore, Options 2 and 3 were rejected because those options would have more adverse impacts on CDQ groups than the preferred alternative, which combines Alternative 3 and Option 1.

Option 1, which limits CDQ groups to three Flatfish Exchanges during a year, is more restrictive than the adoption of Alternative 3 without the option. Alternative 3 without Option 1 would not limit the number of Flatfish Exchanges that a CDQ group could undertake each calendar year. However, Alternative 3 as modified by Option 1 was selected because it met the objectives of this action while establishing limits on the potential administrative burden and costs on NMFS of the final action. As explained in Section 1.8.3 of the RIR/IRFA prepared for this action, the Council determined and NMFS agreed that a maximum of three Flatfish Exchanges per calendar year per CDQ group meets the goals and objectives for the final action, does not unduly constrain CDQ groups, and reduces administrative burden and costs on NMFS. The Flatfish Exchange limits are intended to allow the CDQ groups to make an adequate number of exchanges needed to accommodate uncertain harvesting conditions throughout the year as described earlier in the preamble and in Section 1.6.1 of the RIR/IRFA prepared for this action.

Collection-of-Information Requirements

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0648–0565. Public reporting burden is estimated to average 30 minutes for the Flatfish Exchange Application. The estimated response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments on these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**), and by email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

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

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: September 17, 2014.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, NMFS amends 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447

■ 2. In § 679.2, add definitions for ''ABC reserve''; ''ABC surplus''; ''Amendment 80 ABC reserve''; ''CDQ ABC reserve''; and ''Flatfish Exchange'' in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

ABC reserve means, for purposes of flathead sole, rock sole, and yellowfin sole in the BSAI, an amount, not to exceed the ABC surplus, that may be reduced for social, economic, or ecological considerations according to § 679.20(b)(1)(iii).

ABC surplus means, for purposes of flathead sole, rock sole, and yellowfin sole in the BSAI, the difference between each species' annual ABC and TAC.

* * * * *

Amendment 80 ABC reserve means the amount of the flathead sole, rock sole, or yellowfin sole ABC reserve that remains after designating the amount assigned to the CDQ ABC reserve and that is allocated among Amendment 80 cooperatives as calculated annually as described at § 679.91(i)(2).

* * * * *

CDQ ABC reserve means 10.7 percent of the amount of the flathead sole, rock sole, or yellowfin sole ABC reserve that is allocated among the CDQ groups as calculated annually as described at § 679.31(b)(4).

* * * * *

Flatfish Exchange means the exchange of unused CDQ, or Amendment 80 CQ, of flathead sole, rock sole, or yellowfin sole in the BSAI for an equivalent amount (in metric tons) of CDQ ABC reserve or Amendment 80 ABC reserve, respectively, for flathead sole, rock sole, or yellowfin sole in the BSAI other than the species listed for exchange on the Flatfish Exchange Application as described in a notice of adjustment or apportionment in the **Federal Register**.

* * * * *

■ 3. In § 679.4, add paragraph (p) to read as follows:

§ 679.4 Permits.

* * * * *

(p) *Flatfish Exchange Application.* (1) *Completed application.* NMFS will process only completed Flatfish Exchange Applications submitted by CDQ groups or Amendment 80 cooperatives.

(2) *Certification.* The designated representative must log into the Alaska Region Online application Web site and complete an exchange application form provided on the Web site. By using the NMFS ID, password, and Transfer Key and submitting the Flatfish Exchange Application, the designated representative certifies that all information submitted is true, correct, and complete.

(3) *Approval.* A CDQ group or Amendment 80 cooperative must receive NMFS' approval of a Flatfish Exchange Application prior to using the CDQ or Amendment 80 CQ subject to the Flatfish Exchange. NMFS will approve the Flatfish Exchange Application if:

(i) The CDQ group has sufficient CDQ ABC reserves of flathead sole, rock sole, or yellowfin sole;

(ii) The Amendment 80 cooperative has sufficient Amendment 80 ABC reserves of flathead sole, rock sole, or yellowfin sole;

(iii) The CDQ group receiving flathead sole, rock sole, or yellowfin sole from its CDQ ABC reserve exchanges an equal amount of unused CDQ of flathead sole, rock sole, or yellowfin sole, other than the species received from its CDQ ABC reserve;

(iv) The Amendment 80 cooperative receiving flathead sole, rock sole, or yellowfin sole from its Amendment 80 ABC reserve exchanges an equal amount of unused Amendment 80 CQ of flathead sole, rock sole, or yellowfin sole, other than the species received from its Amendment 80 ABC reserve;

(v) The CDQ group or Amendment 80 cooperative has not received at least three approved Flatfish Exchanges during that calendar year, as described at paragraph (p)(5) of this section;

(vi) Approval of the Flatfish Exchange Application will not cause flathead sole, rock sole, or yellowfin sole to exceed an ABC or an ABC reserve for that species; and

(vii) NMFS receives a completed Flatfish Exchange Application from a CDQ group or Amendment 80 cooperative during the calendar year for which the Flatfish Exchange would be effective, and NMFS can approve that Flatfish Exchange Application before the end of the calendar year in which the Flatfish Exchange would be effective.

(4) *Notification.* (i) No exchange, adjustment, or apportionment of flathead sole, rock sole, or yellowfin sole may take effect until a notice of adjustment or apportionment has been published in the **Federal Register** with a statement of the findings on which the apportionment or adjustment is based.

(ii) Each NMFS approved Flatfish Exchange is debited as one Flatfish Exchange. An approved Flatfish Exchange is effective on the date of publication of the notice of adjustment or apportionment in the **Federal Register**.

(5) *CDQ ABC reserve and Amendment 80 ABC reserve exchange limitations.* Each CDQ group and each Amendment 80 cooperative is limited to no more than three Flatfish Exchanges per calendar year.

■ 4. In § 679.20:

■ a. Add paragraph (b)(1)(iii); and

■ b. Revise paragraphs (c)(1)(iv) and (c)(3)(iii) to read as follows:

§ 679.20 General limitations.

* * * * *

(b) * * *

(1) * * *

(iii) *ABC reserves.* (A) ABC reserves are annually established for flathead sole, rock sole, and yellowfin sole. For each flatfish species, the ABC reserve is calculated as an amount less than or equal to the ABC surplus. NMFS, after consultation with the Council, may set the ABC reserve for flathead sole, rock sole, or yellowfin sole below the ABC surplus for that species based on social, economic, or ecological considerations.

(B) *CDQ ABC reserves.* An amount equal to 10.7 percent of the ABC reserves for flathead sole, rock sole, and yellowfin sole will be allocated to a

CDQ ABC reserve. The CDQ ABC reserves will be:

(*1*) Calculated during the annual harvest specifications described at paragraph (c) of this section, as allocations to CDQ groups; and

(*2*) Allocated to each CDQ group as described under § 679.31(b)(4).

(C) *Amendment 80 ABC reserves.* Amendment 80 ABC reserves shall be calculated as the ABC reserves described under paragraph (b)(1)(iii)(A) of this section as reduced by the CDQ ABC reserves under paragraph (b)(1)(iii)(B) of this section. The Amendment 80 ABC reserves will be:

(*1*) Calculated during the annual harvest specifications described at paragraph (c) of this section, as allocations to Amendment 80 cooperatives; and

(*2*) Allocated to each Amendment 80 cooperative as described under § 679.91(i)(2).

* * * * *

(c) * * *

(1) * * *

(iv) *BSAI.* (A) The proposed harvest specifications will specify for up to two fishing years the annual TAC for each target species and apportionments thereof, PSQ reserves and prohibited species catch allowances, seasonal allowances of pollock, Pacific cod, and Atka mackerel TAC (including pollock, Pacific cod, and Atka mackerel CDQ), and CDQ reserves.

(B) The proposed harvest specifications will specify for up to two fishing years the ABC surpluses, ABC reserves, CDQ ABC reserves, CDQ ABC reserves for each CDQ group, Amendment 80 ABC reserves, and Amendment 80 ABC reserves for each Amendment 80 cooperative for flathead sole, rock sole, and yellowfin sole.

* * * * *

(3) * * *

(iii) *BSAI.* (A) The final harvest specifications will specify for up to two fishing years the annual TAC for each target species and apportionments thereof, PSQ reserves and prohibited species catch allowances, seasonal allowances of pollock (including pollock, Pacific cod, and Atka mackerel CDQ), and CDQ reserves.

(B) The final harvest specifications will specify for up to two fishing years the annual ABC surpluses, ABC reserves, CDQ ABC reserves, CDQ ABC reserves for each CDQ group, Amendment 80 ABC reserves, and Amendment 80 ABC reserves for each Amendment 80 cooperative for flathead sole, rock sole, and yellowfin sole.

* * * * *

■ 5. In § 679.31:

■ a. Revise paragraphs (a) heading and (b) heading; and

■ b. Add paragraphs (a)(5), (b)(4), and (d) to read as follows:

§ 679.31 CDQ and PSQ reserves, allocations, and transfers.

(a) *CDQ, PSQ, and CDQ ABC reserves.* * * *

(5) *CDQ ABC reserves.* (See § 679.20(b)(1)(iii)(A))

(b) *Allocations of CDQ, PSQ, and CDQ ABC reserves among the CDQ groups.* * * *

(4) *Annual allocations of CDQ ABC reserves among the CDQ groups.* (i) An amount equivalent to 10 percent of the ABC reserve for flathead sole, rock sole, and yellowfin sole as determined under the annual harvest specifications at § 679.20(c) shall be allocated among the CDQ groups based on the CDQ percentage allocations under 16 U.S.C. 1855(i)(1)(C), unless modified under 16 U.S.C. 1855(i)(1)(H); and

(ii) An amount equivalent to 0.7 percent of the ABC reserve for flathead sole, rock sole, and yellowfin sole as determined under the annual harvest specifications at § 679.20(c) shall be allocated among the CDQ groups by the panel established in section 305(i)(1)(G) of the Magnuson-Stevens Act.

* * * * *

(d) *Accessing CDQ ABC reserves.* Each CDQ group may request that NMFS approve a Flatfish Exchange to add flathead sole, rock sole, or yellowfin sole to its CDQ account in exchange for reducing its CDQ account by an equal amount of flathead sole, rock sole, or yellowfin sole. CDQ groups may request Flatfish Exchanges by submitting a completed Flatfish Exchange Application as described at § 679.4(p).

■ 6. In § 679.91, add paragraph (i) to read as follows:

§ 679.91 Amendment 80 Program annual harvester privileges.

* * * * *

(i) *Amendment 80 ABC reserves.* (1) *General.* The Regional Administrator will determine the Amendment 80 ABC reserves for flathead sole, rock sole, and yellowfin sole that will be assigned to the Amendment 80 sector as part of the annual harvest specifications described at § 679.20(c). Amendment 80 ABC reserves will be further allocated to Amendment 80 cooperative(s), as described in paragraph (i)(2) of this section.

(2) *Allocation of Amendment 80 ABC reserves to Amendment 80 cooperatives.* The amount of Amendment 80 ABC reserve for each species of flathead sole, rock sole, and yellowfin sole assigned to an Amendment 80 cooperative is equal to the amount of Amendment 80 QS units of that species assigned to that Amendment 80 cooperative by Amendment 80 QS holders divided by the total Amendment 80 QS pool for that species multiplied by the Amendment 80 ABC reserve for that species.

(3) *Accessing Amendment 80 ABC reserves.* An Amendment 80 cooperative may request that NMFS approve a Flatfish Exchange to add flathead sole, rock sole, or yellowfin sole CQ to its Amendment 80 CQ account in exchange for reducing its Amendment 80 CQ by an equal amount of flathead sole, rock sole, or yellowfin sole. An Amendment 80 cooperative may request Flatfish Exchanges by submitting a completed Flatfish Exchange Application as described in § 679.4(p).

[FR Doc. 2014–22568 Filed 9–22–14; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 79, No. 184

Tuesday, September 23, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0649; Directorate Identifier 2014–NM–132–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 787–8 airplanes. This proposed AD was prompted by reports of missing bonded plugs found prior to airplane delivery, during manufacturing inspections, at various locations in certain stringers of the forward electrical equipment (EE) bay of the lower lobe cargo compartments. This proposed AD would require drilling a hole and installing and bonding plugs in certain stringers of the forward EE bay of the lower lobe cargo compartments. We are proposing this AD to detect and correct missing or misaligned bonded plugs which, in the event of a fire, could cause an increased rate of loss of Halon in the lower cargo compartments, and result in the inability to extinguish a fire and consequent loss of control of the airplane.

DATES: We must receive comments on this proposed AD by November 7, 2014.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0649; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Francis Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6596; fax: 425–917–6590; email: *francis.smith@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0649; Directorate Identifier 2014–NM–132–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received reports of missing bonded plugs found prior to airplane delivery, during manufacturing inspections, at various locations in certain stringers of the forward electrical equipment (EE) bay of the lower lobe cargo compartments. The cause was determined to be miscalculated pressure exposures during design. This condition, if not corrected, could result in missing or misaligned bonded plugs which, in the event of a fire, could cause an increased rate of loss of Halon in the lower cargo compartments, and result in the inability to extinguish a fire and consequent loss of control of the airplane.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin B787–81205–SB530024–00, Issue 001, dated May 15, 2014. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2014–0649.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the Service Information.''

Explanation of ''RC'' Steps in Service Information

The FAA worked in conjunction with industry, under the Airworthiness Directives Implementation Aviation Rulemaking Committee, to enhance the AD system. One enhancement was a

new process for annotating which steps in the service information are required for compliance with an AD. Differentiating these steps from other tasks in the service information is expected to improve an owner's/operator's understanding of crucial AD requirements and help provide consistent judgment in AD compliance. The actions specified in the service information described previously include steps that are labeled as RC (required for compliance) because these steps have a direct effect on detecting, preventing, resolving, or eliminating an identified unsafe condition.

As noted in the specified service information, steps labeled as RC must be done to comply with the proposed AD. However, steps that are not labeled as RC are recommended. Those steps that are not labeled as RC may be deviated from, done as part of other actions, or done using accepted methods different from those identified in the service information without obtaining approval of an alternative method of compliance (AMOC), provided the steps labeled as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to steps labeled as RC will require approval of an AMOC.

Difference Between This Proposed AD and the Service Information

Although Boeing Alert Service Bulletin B787–81205–SB530024–00, Issue 001, dated May 15, 2014, recommends installing and bonding the plugs within 24 months, we and Boeing have determined a 12-month compliance time is appropriate. We have advised Boeing to correct the compliance time statement in the next revision of the service information to specify a 12-month compliance time. In developing an appropriate compliance time for this AD, we considered the degree of urgency associated with the subject unsafe condition, and the average utilization of the affected fleet and time necessary to perform the installation. In light of these factors, we find that a 12-month compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

Costs of Compliance

We estimate that this proposed AD affects 3 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Bonded plug installations	100 work-hours × $85 per hour = $8,500	$3,466	$11,966	Up to $35,898.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2014–0649; Directorate Identifier 2014–NM–132–AD.

(a) Comments Due Date

We must receive comments by November 7, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 787–8 airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin B787–81205–SB530024–00, Issue 001, dated May 15, 2014.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage Structure (General).

(e) Unsafe Condition

This AD was prompted by reports of missing bonded plugs found prior to airplane delivery, during manufacturing inspections, at various locations in certain stringers of the forward electrical equipment (EE) bay of the lower lobe cargo compartments. We are issuing this AD to detect and correct missing or misaligned bonded plugs which, in the event of a fire, could cause an increased rate of loss of Halon in the lower cargo compartments, and result in the inability to extinguish a fire and consequent loss of control of the airplane.

(f) Compliance

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

(g) Bonded Plug Installation

Within 12 months after the effective date of this AD: Drill a hole in stringers S–34L and S–35L, remove the plugs, and install and bond new plugs, in the forward EE bay of the lower lobe cargo compartments, as applicable, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB530024–00, Issue 001, dated May 15, 2014.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) If the service information contains steps that are labeled as RC (Required for Compliance), those steps must be done to comply with this AD; any steps that are not labeled as RC are recommended. Those steps that are not labeled as RC may be deviated from, done as part of other actions, or done using accepted methods different from those identified in the specified service information without obtaining approval of an AMOC, provided the steps labeled as RC can be done and the airplane can be put back in a serviceable condition. Any substitutions or changes to steps labeled as RC require approval of an AMOC.

(i) Related Information

(1) For more information about this AD, contact Francis Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6596; fax: 425–917–6590; email: *francis.smith@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on September 12, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–22622 Filed 9–22–14; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2014–0469; FRL–9912–66-Region 9]

Revisions to the Arizona State Implementation Plan; State Stationary Source Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Arizona State Implementation Plan (SIP). These revisions include two State statutes and certain State rules that govern stationary sources under the jurisdiction of the Arizona Department of Environmental Quality and that establish definitions and other general provisions; ambient air quality standards and area designations; and emissions limitations and other requirements for certain type of stationary sources. Generally, approval of these revisions updates and replaces previously approved provisions in the Arizona SIP, but EPA is also approving a few rules that are new to the Arizona SIP and a few rescissions that remove certain other rules from the Arizona SIP without replacement. The EPA is approving these revisions because they meet all applicable requirements of the Clean Air Act (CAA or the Act).

DATES: Any comments on this proposal must arrive by *October 23, 2014.*

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2014–0469, by one of the following methods:

1. Federal eRulemaking Portal: *www.regulations.gov.* Follow the on-line instructions.

2. Email: *steckel.andrew@epa.gov.*

3. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, EPA Region IX, (415) 947–4125, *vineyard.christine@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the statutes and rules in the following table:

Submitted Arizona Statutes and Rules Approved in This Action

Arizona Revised Statutes (ARS) Section No.	Title	State effective date	Submitted
49–402	State and county control	Amended through Laws 2002, Ch. 110, § 1.	10/29/12
49–426 (excluding paragraphs D, E.1, F, I, J, and M) [1].	Permits; duties of director; exceptions; applications; objections; fees.	Amended through Laws 1997, Ch. 178, § 5.	07/28/11
Arizona Administrative Code (AAC) Rule No.	**Title**	**Effective date**	**Submitted**
R18–2–101 [excluding definitions (2), (20), (32), (87), (109), and (122)] [2].	Definitions	Various	10/29/12
R18–2–102	Incorporated Materials	08/07/12	10/29/12
R18–2–201	Particulate Matter: PM_{10} and $PM_{2.5}$	08/07/12	10/29/12
R18–2–202	Sulfur Oxides (Sulfur Dioxide)	08/07/12	10/29/12
R18–2–203	Ozone: One-hour Standard and Eight-hour Averaged Standard.	08/07/12	10/29/12
R18–2–204	Carbon monoxide	09/26/90	07/28/11
R18–2–205	Nitrogen Oxides (Nitrogen Dioxide)	08/07/12	10/29/12
R18–2–206	Lead	08/07/12	10/29/12
R18–2–210	Attainment, Nonattainment, and Unclassifiable Area Designations.	08/07/12	10/29/12
R18–2–215	Ambient air quality monitoring methods and procedures	09/26/90	10/29/12
R18–2–216	Interpretation of Ambient Air Quality Standards and Evaluation of Air Quality Data.	03/07/09	10/29/12
R9–3–218 (rescission)	Violations	08/07/12 (repeal)	07/28/11
R18–2–601	General	11/15/93	07/15/98
R18–2–604	Open Areas, Dry Washes, or Riverbeds	11/15/93	07/15/98
R18–2–605	Roadways and Streets	11/15/93	07/15/98
R18–2–606	Material Handling	11/15/93	07/15/98
R18–2–607	Storage piles	11/15/93	07/15/98
R18–2–608	Mineral Tailings	03/07/09	07/28/11
R18–2–614	Evaluation of nonpoint source emissions	08/07/12	07/15/98
R18–2–701	Definitions	08/07/12	10/29/12
R18–2–703	Standards of Performance for Existing Fossil-fuel Fired Steam Generators and General Fuel-burning Equipment.	03/07/09	07/28/11
R18–2–704	Standards of Performance for Incinerators	08/04/07	07/28/11
R18–2–706	Standards of Performance for Existing Nitric Acid Plants	11/15/93	07/15/98
R18–2–707	Standards of Performance for Existing Sulfuric Acid Plants	11/15/93	07/15/98
R9–3–509 (rescission)	Standards of Performance for Existing Petroleum Refineries	Not yet repealed but no applicable sources.	07/15/98
R18–2–714	Standards of Performance for Existing Sewage Treatment Plants.	11/15/93	07/15/98
R18–2–715(F), (G) and (H)	Standards of Performance for Existing Primary Copper Smelters: Site-Specific Requirements.	03/07/09	07/28/11
R9–3–518 (rescission)	Standards of Performance for Existing Kraft Pulp Mills	08/04/07 (repeal)	07/28/11
R18–2–719	Standards of Performance for Existing Stationary Rotating Machinery.	03/07/09	07/28/11
R18–2–720	Standards of Performance for Existing Lime Manufacturing Plants.	03/07/09	07/28/11
R18–2–723	Standards of Performance for Existing Concrete Batch Plants	11/15/93	07/15/98
R18–2–724	Standards of Performance for Fossil-fuel Fired Industrial and Commercial Equipment.	03/07/09	07/28/11
R18–2–726	Standards of Performance for Sandblasting Operations	11/15/93	07/15/98
R18–2–728	Standards of Performance for Existing Ammonium Sulfide Manufacturing Plants.	11/15/93	07/15/98
R18–2–729	Standards of Performance for Cotton Gins	08/04/07	07/28/11
R18–2–730	Standards of Performance for Unclassified Sources	03/07/09	07/28/11
R18–2–732	Standards of Performance for Existing Hospital/Medical/Infectious Waste Incinerators.	08/04/07	07/28/11
Appendix 2	Test Methods and Protocols	10/03/05	07/28/11
Appendix 10 (rescission)	Evaluation of Air Quality Data	03/07/09 (repeal)	07/28/11
Appendix 11 (rescission)	Allowable Particulate Emissions Computations	03/07/09 (repeal)	07/28/11
Not applicable	Arizona Testing Manual for Air Pollutant Emissions, Revision F, March 1992, Section 1.	March 1992	07/28/11

[1] The EPA will be taking action on ARS section 49–426(F) in a separate rulemaking action that will relate to Arizona's amended New Source Review program. ADEQ does not intend the other paragraphs that are listed (i.e., D, E.1, I, J, and M) to be part of the Arizona SIP.

[2] The EPA will be taking action on the following six definitions in R18–2–101 in a separate rulemaking action that will relate to Arizona's amended New Source Review program: "actual emissions," "begin actual construction," "construction," "net emissions increase," "potential to emit," and "regulated NSR pollutant."

In the Rules and Regulations section of this **Federal Register**, we are approving these statutes and rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: May 30, 2014.

Jared Blumenfeld,

Regional Administrator, Region IX.

Editorial Note: This document was received for publication by the Office of **Federal Register** on September 17, 2014.

[FR Doc. 2014–22479 Filed 9–22–14; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R5–ES–2014–0021; FXES11130900000C6–123–FF09E30000]

RIN 1018–AY83

Endangered and Threatened Wildlife and Plants; Proposed Rule To Remove the Delmarva Peninsula Fox Squirrel From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of draft post-delisting monitoring plan.

SUMMARY: Under the authority of the Endangered Species Act of 1973, as amended (Act), we, the U.S. Fish and Wildlife Service (Service), propose to remove the Delmarva Peninsula fox squirrel (*Sciurus niger cinereus*), more commonly called the Delmarva fox squirrel (DFS), from the Federal List of Endangered and Threatened Wildlife due to recovery. This proposed action is based on a thorough review of all available information, which indicates that the subspecies is now sufficiently abundant and distributed to withstand current and foreseeable threats to its long-term viability and thus no longer meets the definition of a threatened species or an endangered species under the Act.

We are also providing notification that a draft post-delisting monitoring (PDM) plan is available for public review. We are seeking information and comments from the public on this proposed rule and the PDM plan.

DATES: We will accept comments received or postmarked on or before November 24, 2014. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 7, 2014.

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

Electronically: Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R5–ES–2014–0021. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Send a Comment or Submission.''

By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R5–ES–2014–0021, U.S. Fish & Wildlife Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide (see the Public Comments section below for more information).

Copies of Documents: The proposed rule, draft post-delisting monitoring plan, and primary supporting documents are available on *http://www.regulations.gov.* In addition, the supporting file for this proposed rule will be available for public inspection, by appointment during normal business hours, at the Chesapeake Bay Field Office, 177 Admiral Cochrane Dr., Annapolis, MD 21401, 410–573–4573, and on the Chesapeake Bay Field Office Web site at: *http://www.fws.gov/chesapeakebay/.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 800–877–8339.

FOR FURTHER INFORMATION CONTACT: Questions or requests for additional information may be directed to Genevieve LaRouche, Field Supervisor, by telephone at 410–573–4573, or Cherry Keller, Wildlife Biologist, by electronic mail at *cherry_keller@fws.gov* or by telephone 410–573–4532. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 800–877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of Regulatory Action

We propose to remove the Delmarva fox squirrel from the Federal List of Endangered and Threatened Wildlife (50 CFR 17.11) due to recovery. This proposed action is based on a thorough review of the best available scientific and commercial information as assessed in two 5-year status reviews conducted in 2007 and 2012. These reviews, along with additional information that has become available since 2012, indicate that current threats to the Delmarva fox squirrel have been sufficiently abated and that the subspecies is now sufficiently abundant and widely distributed to withstand any foreseeable threat to its long-term viability. It therefore no longer meets the definition of a threatened species or an endangered species under Act. This document thus consists of: (1) A proposed rule to delist the Delmarva fox squirrel; and (2) a notice of availability of a draft post-delisting monitoring plan.

Basis for Finding

Under the Endangered Species Act, a species may be determined to be endangered or threatened based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We must consider the same factors in delisting a species. We may delist a species if the best scientific and commercial data indicate the species is neither threatened nor endangered for one or more of the following reasons: (1) The species is extinct, (2) the species has recovered and is no longer threatened or endangered, or (3) the original scientific data used at the time the species was classified were in error.

The Delmarva Peninsula fox squirrel was listed as federally endangered in 1967, because its distribution had

contracted to only 10 percent of its historical range. The most likely causes for this decline were loss of mature forest from land clearing for agriculture, short-rotation timber harvest, and overhunting.

After reviewing all available scientific and commercial information, we find that delisting the Delmarva fox squirrel due to recovery is warranted for the following reasons:

(1) As a result of translocations and discovery of additional natural populations, the known distribution of DFS has expanded since listing, and its range now extends over 28 percent of the Delmarva Peninsula. Acres of occupied forest and average density estimates lead to an overall estimate of 17,000 to 20,000 DFS distributed across the subspecies' current range.

(2) The primary threats to the species' viability, including habitat loss due to development, timber harvest, and sea level rise, no longer pose either a current or foreseeable risk of DFS extinction, based on the following findings:

- Most development on the Delmarva Peninsula is projected to occur around several large cities outside the DFS's current occupied range, and existing laws and programs are directing development into agricultural land and out of forest land. Further, within the squirrel's current range, land protection is occurring at a more rapid rate than the rate of development. Within the current range, about 30 percent of DFS-occupied forest is now protected from development (USFWS 2012, table 5), comprising approximately 16,187 hectares (ha) (40,000 acres (ac)) of protected and occupied forest.
- Timber harvest rates and the size of individual cuts are decreasing over time, and remote sensing data indicate that sufficient acres of mature forest have remained on the landscape even with past harvest rates. In addition, 23,472 ha (58,000 ac) of forest land previously managed for pulpwood—and thereby precluded from maturing into DFS habitat—are now being managed by the State of Maryland for sawtimber and wildlife values, including DFS conservation; this management plan is expected to continue over the foreseeable future.
- Although sea level rise is projected to eventually affect the largest extant population of DFS, the associated habitat losses are not expected to cause its extirpation. This DFS population, which is over 70 times the minimum viable population size, is likely to expand into more inland forests via riparian and other connecting corridors. Further, despite impacts to this area and other localized habitat areas, over 80 percent of the squirrel's range is not vulnerable to a foreseeable sea level rise of 0.61 meter (m) (2 feet (ft)).
- Based on a 40-year track record, it is apparent that State laws and programs in Maryland, Delaware, and Virginia will continue to provide for forest habitat and wildlife conservation, including preventing the return of overhunting of DFS, following delisting.

Taking into consideration the current and projected rangewide population viability of the DFS and availability of suitable habitat, our overall conclusion is that this species is no longer in danger of becoming extinct, nor is it likely to once again become endangered in the foreseeable future.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and effective as possible. Therefore, we invite tribal and governmental agencies, the scientific community, industry, and other interested parties to submit comments or new data, if any, regarding this proposed rule. In particular, we are seeking information and comments concerning: (1) The continued presence, extirpation, or new locations of DFS colonies within the subspecies' historical range; (2) our analysis of the viability of DFS populations; (3) our analysis of the factors likely to affect the long-term status of the squirrel, especially development, forestry, and sea-level rise projections for the Delmarva Peninsula; and (4) our proposed post-delisting monitoring program for the DFS.

Please bear in mind that comments simply advocating or opposing the proposed action without providing supporting information will be noted but not considered in making a determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) directs that determinations as to whether any species is a threatened or endangered species shall be made ''solely on the basis of the best scientific and commercial data available.''

To issue a final rule to implement this proposed action, we will take into consideration comments and any additional information received within the public comment period. Such communications may lead to a final rule that differs from this proposal. All comments provided to us, including commenters' names and addresses, will become part of the supporting record.

You may submit your comments and supporting materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments sent to an address not listed in **ADDRESSES**. All comments must be submitted to *http://www.regulations.gov,* hand delivered, or postmarked by the deadline specified in **DATES**.

We will post your entire comment, including your personal identifying information, on *http://www.regulations.gov.* Individuals wishing to withhold personal identifying information, such as street address, phone number, or email address, must make this request prominently at the beginning of the comment document. Please note, however, that we cannot guarantee that we will be able to comply with such requests. We will always make submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Comments and materials we receive, as well as supporting documentation used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov* or by appointment during normal business hours at the Service's Chesapeake Bay Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Peer Review

In accordance with our policy, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' published on July 1, 1994 (59 FR 34270), we will seek the expert opinion of at least three appropriate independent specialists regarding scientific data and interpretations contained in this proposed rule. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analysis. Accordingly, the final decision may differ from this proposal.

Background

Regulations published at 50 CFR part 424 specify the procedures and requirements for adding or removing species from the List of Endangered and Threatened Wildlife (50 CFR 17.11). The Secretary of the Interior has delegated responsibility to the Service for determining whether a species should be removed from any List published pursuant to section 4(c) of the Act. We are additionally required by section

4(c)(2) and 50 CFR 424.12 to review each species on the List every 5 years (i.e., conduct a 5-year review) to determine whether a species' classification under the Act is accurate. In the course of a 5-year review, we evaluate whether the species continues to meet the legal definition of a threatened or endangered species, based upon the species' biological status and its status relative to the five factors under section 4(a)(1). These factors encompass the following extinction risks: (A) The present or threatened destruction, modification, or curtailment of the species' habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting the species' continued existence. A species may be delisted pursuant to 50 CFR 424.11(d) if the best available scientific and commercial data substantiate that the species is neither endangered nor threatened for one or more of the following reasons: The species is considered to be extinct, the species is considered to be recovered, or the data available when the species was listed (or the interpretation of those data) were in error.

This proposed rule is based upon information contained in, and the recommendation of, a 5-year review for the DFS that was initiated on August 4, 2010 (75 FR 47025), and approved on September 4, 2012 (USFWS 2012). The review, which assessed the DFS's status across its entire range, concluded that the subspecies is now sufficiently abundant and distributed to withstand current and foreseeable threats to its long-term viability, and that, therefore, the subspecies does not meet the definition of either an endangered species or a threatened species under section 3 of the Act, based on recovery. The entire review is available at *http://www.fws.gov/northeast/EcologicalServices/recovery,* and on the Chesapeake Bay Field Office Web site: *http://www.fws.gov/chesapeakebay.*

Previous Federal Actions

The Delmarva Peninsula fox squirrel was listed as an endangered species throughout its known historical range on March 11, 1967 (32 FR 4001). At that time, critical habitat was not provided for under the Act; hence, critical habitat was not designated for the DFS.

On September 13, 1984 (49 FR 35951), a translocated DFS population released on the Assawoman Wildlife Management Area in Sussex County, Delaware, was designated as an experimental nonessential population. Notably, this was the first experimental population designated under the Act.

The original recovery plan for the DFS was approved on November 6, 1979. The recovery plan was subsequently revised in January 1983, with a second revision on June 8, 1993. On October 31, 2003, the second revision of the recovery plan was updated to include new status information and clarify the recovery criteria for the DFS.

The DFS was included in three cursory 5-year reviews conducted for all listed species from 1979 to 1991, including a 1979 (44 FR 29566) review of all species listed prior to 1975; a 1985 (50 FR 29901) review of all species listed before 1976 and in 1979 and 1980; and a 1991 (56 FR 56882) review of all species listed before 1991. None of these reviews resulted in a recommendation to change the listing status of the DFS.

The first comprehensive and species-specific 5-year review for the DFS was completed in 2007 (USFWS 2007). This review recommended reclassification of the DFS from endangered to threatened status, pending further analysis of forest and development patterns on the Delmarva Peninsula. The second comprehensive 5-year review for the subspecies was completed in 2012; its recommendation to delist the DFS forms the basis for this proposed rule.

Further information on Federal actions for the DFS can be found on the Service's Environmental Conservation Online System (ECOS) at: *http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=A00B.*

Biological Background

The Delmarva fox squirrel (*Sciurus niger cinereus*) is a subspecies of eastern fox squirrel (*Sciurus niger*) found only on the Delmarva Peninsula. The Delmarva Peninsula is located between the Chesapeake Bay and Atlantic Ocean and covers portions of Maryland, Delaware, and Virginia. The DFS is a large, silver-gray tree squirrel with white underparts and a wide tail. It can be easily distinguished from the gray squirrel (*Sciurus carolinensis*), the only other tree squirrel in the area, by its larger size, wider tail, short ears, and silver-gray color. The DFS inhabits mature forests of mixed hardwoods and pines within the agricultural landscapes of the Delmarva Peninsula and is not typically found in suburban settings. These mature forests provide abundant crops of acorns, pine cones, and other food as well as cavities for dens. DFS are also associated with forests that have a more open understory (Dueser *et al.* 1988, entire; Dueser 2000, entire) or where understory shrubs are clumped, leaving other open spaces (Morris 2006, p. 37). DFS use a wide range of mixed forest types that may be dominated by hardwoods or conifers. While they need mature forest, their diets are diverse and they travel and forage in many areas, including clearcuts, young forests, and agricultural fields.

As members of the Order Rodentia, DFS have life histories with good potential for population increase; for example, females breed at 1 year of age, litter sizes range from 2 to 4 young, some females have potential for 2 litters in 1 year, and lifespans can reach 6 to 7 years in the wild. Den sites are frequently found in hollow portions of trees, but leaf nests may be used as well. Home ranges of DFS vary considerably but are typically 12 to 16 ha (30 to 40 ac), and individual home ranges overlap (Flyger and Smith 1980; entire, Paglione 1996; entire, Pednault-Willett 2002, p. 109). Densities range from 0.36 to 1.29 DFS per ha (0.15 to 0.5 DFS per ac), averaging 0.82 DFS per ha (0.33 DFS per ac) (Paglione 1996, p. 28; Pednault-Willett 2002, pp. 85–104).

Historically, this species was patchily distributed throughout most of the Delmarva Peninsula and into southern Pennsylvania, but by the time of listing the remnant populations occurred in only four Maryland counties (Taylor 1976, entire); this range contraction was most likely due to land use changes and hunting. When the subspecies was listed in 1967, its distribution had been reduced to only 10 percent of the Delmarva Peninsula. After listing, the hunting season was closed and recovery efforts focused on expanding the squirrel's distribution through translocations, thereby decreasing its vulnerability to extinction. In addition, new populations have been discovered since the time of listing (particularly since more intensive search efforts were initiated), and there are now many more areas of forest known to be occupied by DFS.

The squirrel's current occupied range is defined as the area within 4.8 kilometers (km) (3 miles (mi)) of credible DFS sightings. As of the 2012 5-year review, this covered 28 percent of the Delmarva Peninsula, including 10 of the 14 peninsular counties (8 counties in Maryland and 1 each in Delaware and Virginia) and 54,543 ha (134,778 ac) of occupied forest (USFWS 2012, based on 2010 data). Since that time, new sightings have continued to occur and an updated overview of the range as of 2013 is provided in table 1. An additional population discovered in Worcester County, Maryland, is the first population found there that was not a result of a translocation. Figure 1 shows

range changes from the time of the 1993 recovery plan to the present.

TABLE 1—KNOWN OCCUPIED RANGE OF THE DFS, 1970 TO 2013

Occupied range	Year (approximate date for the data)				
	~ 1970	1990	2005	2010	2013
Number of counties in the range (without translocations).	3	3	6	6	7
Number of counties in the range (with translocations).	4	10	10	10	10
Total acres of occupied forest rangewide.	N/A	103,311	128,434	134,778	137,363
Percent of historical range occupied.	10		27	28	28
Source	*Taylor and Flyger 1974.*	*USFWS 1993, recovery plan.*	*USFWS 2007, 5-yr review.*	*USFWS 2012, 5-yr review.*	*USFWS 2013 data*

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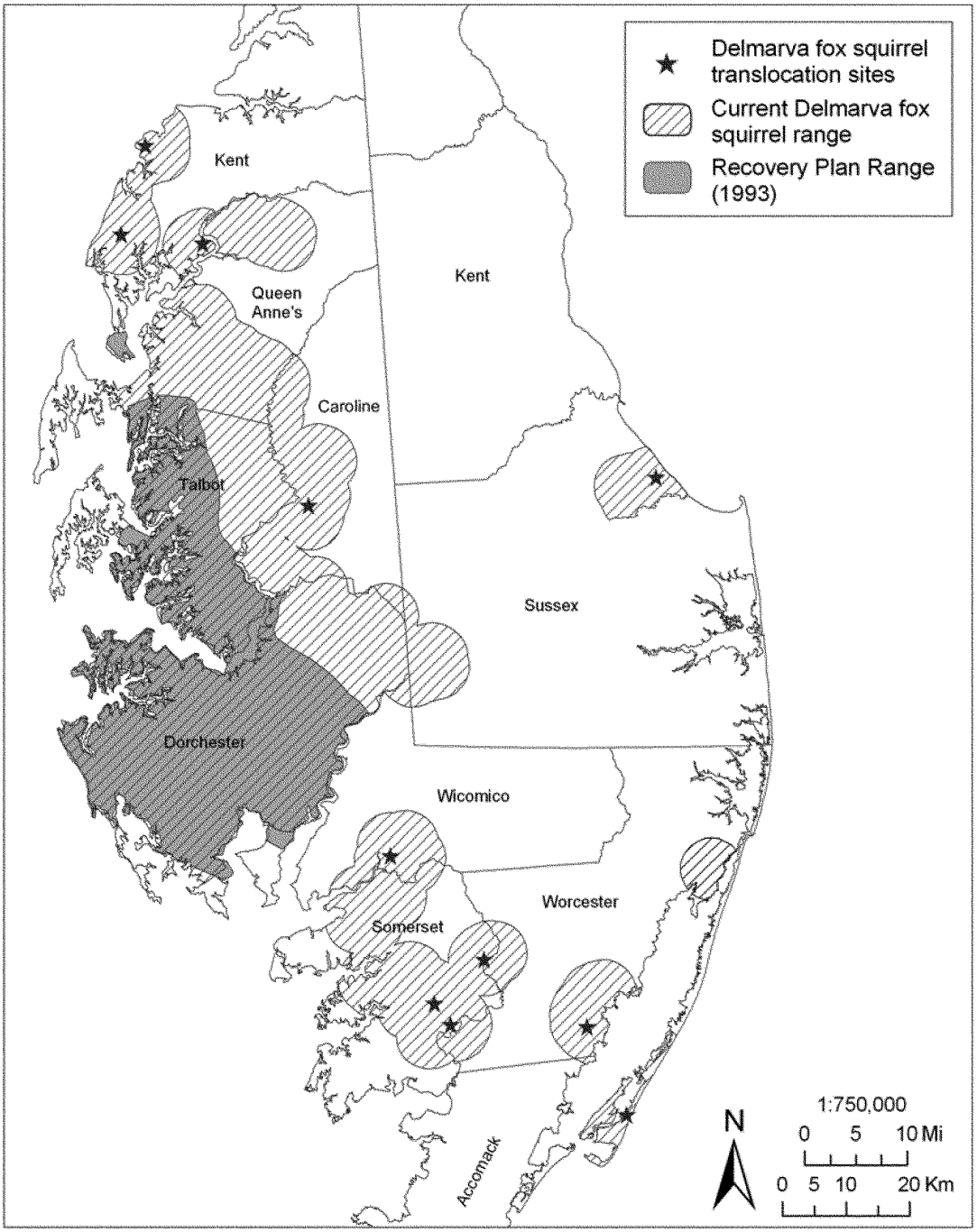
Figure 1. Changes in DFS range, 1993 to the present, including successful translocation sites.



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Recovery Criteria

Determinations to remove species from the List must be made in accordance with sections 4(a)(1) and 4(b) of the Act. Section 4(a)(1) requires that the Secretary determine if a species is endangered or threatened because of one or more of five threat factors. Section 4(b) of the Act requires that the determination be made ''solely on the basis of the best scientific and commercial data available.''

Recovery criteria, as required by section 4(f)(1)(B)(ii) of the Act, help guide recovery efforts and act as triggers for when it might be appropriate to undertake a review of the status of a listed species; however, the ultimate determination of whether to reclassify or delist a species must be made in accordance with statutory standards. Thus, although recovery criteria should always be considered when making listing decisions for listed species, they can neither substitute for nor pre-empt 4(a)(1) determinations and the regulations promulgated under this section of the Act. Ultimately, a decision to remove a species from the

Federal List of Endangered and Threatened Wildlife is made when the best available data show that the species is no longer an endangered species or a threatened species, regardless of how closely this information conforms to the information and criteria in the recovery plan.

The following discussion provides a brief review of the current recovery plan for the DFS, as well as an assessment of the plan's objectives and criteria as they relate to evaluating the status of this subspecies.

The most recent DFS recovery plan was approved by the Service on June 8, 1993 (USFWS 1993, entire), and updated on October 31, 2003 (USFWS 2003, entire). The plan states that ''the long-range objective of the DFS recovery program is to restore this endangered species to a secure status within its former range.'' The plan provides three criteria for reclassifying the DFS from endangered to threatened status. It then provides four additional criteria to be considered in conjunction with the first three for delisting the DFS.

Criterion 1: Ecological requirements and distribution within the remaining natural range are understood sufficiently to permit effective management. A considerable body of new information has been obtained regarding DFS distribution and ecological requirements, and we thus conclude that this recovery criterion has been met. The six key contributions to our understanding of the DFS are summarized below.

DFS range and distribution. The geographic information system (GIS) maintained for the DFS documents a significant increase in the area occupied by DFS since the 1993 recovery plan was issued (see figure 1 above). Records of DFS sightings by knowledgeable observers and, in particular, the use of trap and camera surveys have greatly improved our ability to determine which forest tracts are occupied by the DFS and to determine continued DFS presence in these areas.

Population persistence. Persistence of DFS populations over the recovery period has been evaluated through comparison of occupancy over time (USFWS 2012, pp. 15–17). A 1971 survey of 101 sites within the historic range of the DFS identified 65 sites as occupied and 36 sites where the DFS was determined to be absent based on frequent site visits (Taylor and Flyger 1974, entire). This survey was repeated in 2001 (Therres and Willey 2005, entire) and showed that the DFS persisted at 60 of the 65 sites (92 percent) identified as occupied in 1971, was extirpated from 5 sites, and had colonized 11 sites; thus, the DFS was considered to be stable to slightly increasing in the area surveyed.

A second analysis compared DFS persistence in woodlots known to be occupied in 1990 to its occupancy status through 2010 (USFWS 2012, pp. 7–17). As of 1990, the DFS was recorded on 275 Maryland forest tracts comprising 41,720 ha (103,125 ac). Records from 1998 to 2010 indicate that the DFS continued to occupy at least 91 percent of the 41,720 ha (encompassing 181 forest tracts) and was extirpated from 1 percent of these hectares (7 tracts). The occupied forest tracts where DFS persist are widely distributed across the known 1990 range (USFWS 2012, figure 4). Occupancy was deemed uncertain on 87 of the 275 tracts due to difficulty in accessing properties or lack of data (table 2). Noting that because woodlots range in size, the acreage of occupied forest is thought to be a better parameter than number of tracts, if we nevertheless consider the 188 woodlots that can be classified as persisting or extirpated, 96 percent were persisting and only 4 percent were extirpated.

TABLE 2—DFS OCCUPANCY OF 275 FORESTED TRACTS (41,733 HA OR 103,125 AC) IN MARYLAND, 1990 COMPARED TO 2010

Occupancy change from 1990 to 2010	Area of forest	Number of forest tracts	Percent of the original 41,733 ha (103,125 ac) in each occupancy status
Persistence	38,130 ha (94,221 ac)	181	91
Extirpations	499 ha (1,233 ac)	7	1
Uncertain\	3,104 ha (7,671 ac)	87	8
Discoveries or colonizations	13,042 ha (32,227 ac)	250	

As of 2010, an additional 13,042 ha (32,227 ac) of DFS-occupied forest had been reported in all three States (USFWS 2012, p. 8). Although some of these discoveries are likely to be occurrences that were previously present but undetected, anecdotal information indicates that several new localities represent true range expansion. For instance, there are several locations where landowners living at a site for 25 years or more have reported seeing DFS only in the past decade (USFWS 2012, figure 4). Further, at one site in Caroline County, Maryland, DFS were observed 5 years after two seasons of negative trapping results, providing strong evidence for establishment of a new colony. The population on the Nanticoke Wildlife Management Area in southwestern Delaware is also likely a new colonization, given that State biologists had been working at this site for many years without observing DFS. As of 2010, forest areas with persisting or newly discovered DFS occurrences, plus occurrences awaiting confirmation, totaled 54,276 ha (134,119 ac) in Maryland alone. Using the 2010 figures for occupied forest in all three States, as well as maps of mature forest and density estimates of DFS available from various studies, we estimate that the total population of DFS is now about 20,000 animals across an expanded range (USFWS 2012, p. 21).

Population viability. A DFS population viability analysis (PVA) developed by Hilderbrand *et al.* (2007, entire) used environmental variability associated with demographic features of natural populations (fecundity and survivorship) to model the extinction probabilities of populations of different sizes. This PVA determined that a population with 65 females, or 130 animals total, had a 95 percent chance of persisting for 100 years. This value was described as a minimum viable population (MVP) and was used to gauge extinction risk by projecting how many MVPs are likely to be present in a given portion of the current DFS range (USFWS 2012, pp. 18–20).

Using dispersal parameters and existing data on DFS movements, the PVA also estimated that 75 percent of a given DFS population would have the ability to disperse to areas within 4 km

(2.5 mi) (Hilderbrand *et al.* 2007, p. 73). Thus, DFS in forest tracts within 4 km of each other and not separated by physical barriers such as rivers or cities were considered likely to be interbreeding; these interbreeding groups of DFS were defined as subpopulations. The analysis indicated that approximately 85 percent of DFS are found in four large population groups which are narrowly separated and could expand to become more connected. Each of these population groups contains several times the minimum threshold of 130 squirrels needed for a 95 percent probability of population persistence over 100 years; and the rangewide population, estimated at between 17,000 and 20,000 animals, contains more than 100 times the minimum threshold for a single population.

Effects of timber harvest. Two major studies of the effects of timber harvest on DFS (Paglione 1996, entire; Bocetti and Pattee 2003, entire) suggest that DFS are fairly tolerant of timber harvest, although specific impacts depend on the size, location, and landscape position of the harvest. Small clearcuts within a surrounding forest showed relatively little impact on DFS, with individual squirrels shifting their home ranges into adjacent habitat, whereas harvest of more isolated forest peninsulas forced DFS to move greater distances.

In their long-term study, Bocetti and Pattee (2003, entire) assessed the effects of 12- to 20-ha (30- to 50-ac) clearcuts within which small islands of habitat were retained. The number of DFS found pre- and post-harvest remained relatively unchanged, although the number of gray squirrels dramatically declined. As the clearcuts regenerated in the subsequent 10 years into young stands of trees, DFS on the sites decreased to about half of their previous numbers, but overall they maintained a continued presence, using both the islands and adjacent areas of habitat (C. Bocetti, email 9/16/2009). These findings lead to the general conclusion that the DFS can tolerate timber harvests and can continue to occupy forested mosaics of mature and regenerating stands. In addition, both studies of DFS responses to timber harvest suggest that DFS have high site fidelity and tend to shift home ranges rather than abandon a site in response to disturbance.

Habitat availability. An inventory of mature forest suitable for DFS, covering much of the squirrel's range, was recently completed using Light Detection and Ranging (LiDAR) data provided by the State of Maryland (USFWS 2012, appendix E). The ability to use remote sensing to map DFS habitat has greatly improved our understanding of both DFS-occupied habitat and, importantly, unoccupied habitat that is available for potential DFS expansion. As of 2004, LiDAR mapping had identified 175,656 ha (434,056 ac) of mature forest in the eight Maryland counties occupied by DFS (55 percent of all forest was considered mature) with 17 percent currently occupied and over 80 percent of mature forest available for expansion (USFWS 2012, table 4).

Although these numbers and locations will change over time with timber harvest and forest growth, this provides a good baseline assessment of recent habitat patterns and indicates that mature forest is well distributed and available. Mature forest is often found in riparian zones where forests may be too wet to farm or log (USFWS 2012, figure 8); these riparian forest corridors can provide connected habitat for DFS dispersal and colonization of new areas. It is important to note, however, that LiDAR mapping also showed large tracts of mature forest distributed in upland areas throughout the Maryland portion of the range. Given that most DFS populations occur in Maryland, and, further, that unoccupied but suitable habitat is found both along the coast and inland elsewhere on the Peninsula, we can infer from this habitat inventory that there is ample unoccupied mature forest to enable further expansion of the DFS rangewide population.

Habitat connectivity. Lookingbill *et al.* (2010, entire) conducted a GIS analysis of the connectivity of forest patches on the Delmarva Peninsula. This Delmarva Peninsula-wide study used satellite date to identify forested areas, and evaluated connectivity between 400-ha (175-ac) forest patches. Although the DFS is not a forest interior obligate and does not require forest blocks this large, the Lookingbill *et al.* (2010) model provides an interesting analysis of forest connectivity between forest blocks that could hold larger populations. Study results show high connectivity of forest blocks in the southern Maryland portion of the squirrel's range, indicating few obstacles to DFS dispersal throughout this area. The model treats the Choptank and Tuckahoe Rivers as barriers to dispersal; although this may be accurate for the wider sections of these rivers, it is less so for their upper reaches, which are narrow and may freeze in the winter. Two major forest corridors were identified for DFS dispersal out of Dorchester County, Maryland, one of which is already occupied by DFS. In addition, a third dispersal corridor not identified by the model is also DFS-occupied. Observations of DFS movement through a wide range of habitats, along with the results of this connectivity model and the map of LiDAR-defined mature forests, indicate that there is sufficient habitat availability and connectivity for further DFS range expansion.

Criterion 2: Benchmark populations are shown to be stable or expanding based on at least five years of data. Criterion 2 was originally intended to measure overall DFS population trends using at least 5 years of monitoring data from seven benchmark populations (six within the remaining natural range and the introduced Chincoteague National Wildlife Refuge (NWR) population). Ultimately, a slightly different set of eight benchmark sites was monitored and the resulting data were analyzed (Dueser 1999, entire). Dueser (1999) concluded that the benchmark sites were stable over a 5- to 7-year period, and benchmark monitoring was ended.

Since the completion of benchmark monitoring, we have collected additional data to better understand rangewide population trends. The distribution data and two population evaluations described under criterion 1 above are much better indicators of an expanding range and DFS recovery within that range. Although DFS in isolated areas (such as on small islands) are vulnerable to extirpation, the population data for DFS in most of its occupied habitat and the discovery of additional occupied forest tracts indicate that this recovery criterion has been met.

Criterion 3: Ten translocated colonies are successfully established throughout the historical range. This criterion requires that at least 10 new DFS colonies must be established (this may include translocations initiated prior to issuance of the 1993 recovery plan) within the squirrel's historical range and must show evidence of presence for at least 5 to 8 years after release. The intent is to demonstrate the ability of the DFS to colonize new sites, whether naturally or through management.

Consequent to 16 translocation efforts, 11 colonies were successfully established as shown by post-release trapping results (Therres and Willey 2002, entire). More recent trapping and camera surveys further indicate continued presence of these translocated colonies for more than 20 years (USFWS 2012, table 1), and in many of these areas, DFS have dispersed well beyond the initial release site.

The success rate for the DFS translocations (69 percent) is higher than is typically found for similar translocation efforts for other species. A

study of 116 reintroductions found that only 26 percent were classified as successful (Fischer and Lindenmayer 2000, p. 5), although the success rate is generally higher for mammals and wild source populations (Wolf *et al.* 1996, p. 1146). Although there were some initial concerns about the genetic diversity of the translocated populations, subsequent analysis indicated that their genetic diversity was comparable to that of their source populations (Lance *et al.* 2003, entire). Given the relative success of this conservation tool for DFS, we conclude that this recovery criterion has been met.

Criterion 4: Five additional (post-1990) colonies are established outside of the remaining natural range. Criterion 4 requires discovery or establishment (from new translocations) of at least five new colonies that extend the DFS's range beyond that known to be occupied at the time of the 1993 recovery plan. This criterion addresses the threat of range contraction and provides for additional redundancy of populations as one component of long-term species viability.

By 2007, eight new populations had been identified that did not result from translocations, (USFWS 2007, figure 2), expanding the range toward the east. These consist of the Maryland DFS populations in northeastern Dorchester County, southeastern Caroline County, the Tuckahoe River corridor in Talbot County, northern Queen Anne's County, the Centreville area of Queen Anne's County, eastern Talbot County, northern Somerset County, and the Nanticoke Wildlife Management Area in southwestern Sussex County, Delaware. The Sussex County population represents the first population found in Delaware since the time of listing that was not a result of a translocation.

Since the 2007 status review (USFWS 2007), additional occupied forest has been discovered between some of these new populations, thus improving their long-term likelihood of survival (USFWS 2012, figure 3). We therefore conclude that this recovery criterion has been met.

Criterion 5: Periodic monitoring shows that translocated populations have persisted over the recovery period. Criterion 5 requires the continued presence of at least 80 percent of translocated populations; in addition, at least 75 percent of these populations must be stable or improving. All 11 translocated populations (100 percent) that were successfully established have persisted over the full period of recovery and have either grown in abundance on their release sites or have expanded (or shifted) into new areas. Although their initial success was documented solely by trapping techniques (Therres and Willey 2002, entire), we have recently documented their presence by trapping and/or camera surveys conducted between 2009 and 2011 (USFWS 2012, table 1). Overall, with the continued presence and growth of DFS populations at the translocation sites, we conclude that this recovery criterion has been met.

Criterion 6: Mechanisms that ensure perpetuation of suitable habitat at a level sufficient to allow for desired distribution are in place and implemented within all counties in which the species occurs. This criterion requires that mechanisms be in place to ensure perpetuation of sufficient suitable habitat. Several well-established programs protect DFS habitat from development (Rural Legacy, Maryland Environmental Trust, Maryland Agricultural Programs, etc.). These programs, along with State and Federal ownership, protect an estimated 15,994 ha (39,524 ac), 29 percent, of DFS-occupied forest throughout the squirrel's range (USFWS 2012, table 3). In addition, several State laws and regulatory programs, including Maryland's Critical Area Law, Forest Conservation Act, and wetlands laws, and Delaware's Agricultural Land Protection Program and Forest Legacy Program will continue to protect forest habitat (see USFWS 2012, appendix D). As further described below, in Virginia and Delaware the DFS occurs primarily on Federal and State land. The only Virginia population is a barrier island population that was established on Chincoteague National Wildlife Refuge (NWR) and is completely protected from residential development or commercial timber harvest. We thus conclude that this recovery criterion has been met.

Criterion 7: Mechanisms are in place and implemented to ensure protection of new populations, to allow for expansion, and to provide inter-population corridors to permit gene flow among populations. This criterion requires sufficient habitat connectivity and protection to permit gene flow among populations and allow for their expansion. As discussed under criterion 1, LiDAR (remote sensing) data indicate that mature forest blocks connected by riparian corridors are scattered throughout the Delmarva Peninsula. An analysis of current forest distribution using a J-walk model (Lookingbill *et al.* 2010, entire) indicates these connected blocks constitute a good network of forest across the Delmarva Peninsula to allow for dispersing DFS. For example, the translocations on the southern part of the Delmarva Peninsula are in an area of very large and well-connected tracts of forest, including forest on public lands. In addition, there are protected forested pathways connecting Dorchester County, where DFS are abundant, to adjacent counties; DFS are known to use some of these corridors and have found other corridors not identified by the J-walk model. Given these opportunities for dispersal, and the fact that many of these corridors are protected by State regulatory mechanisms (as discussed under *D. The Inadequacy of Existing Regulatory Mechanisms* below), we thus conclude this recovery criterion has been met.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth procedures for listing species, reclassifying species, or removing species from listed status. ''Species'' is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature (16 U.S.C. 1532(16)). Using the best available scientific and commercial data, a species may be determined to be an endangered species or threatened species because of any one or a combination of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. According to 50 CFR 424.11(d), we may also delist a species on the same basis for any of the following reasons: (1) The species is extinct, (2) the species has recovered and is no longer endangered or threatened, and/or (3) the scientific data used at the time the species was listed were in error.

A recovered species is one that no longer meets the Act's definition of a threatened species or endangered species. Determining whether a species is recovered requires consideration of the same five categories of threats specified in section 4(a)(1) of the Act. For species that are already listed as threatened species or endangered species, we evaluate both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable

future following the delisting and the removal of the Act's protections.

A species is an ''endangered species'' under the Act if it is in danger of extinction throughout all or a significant portion of its range. It is a ''threatened species'' if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

The Act does not define the term ''foreseeable future.'' For the purposes of this proposed rule, we regard the foreseeable future as the extent to which, given available data, we can reasonably anticipate events or effects, or extrapolate threat trends, such that reliable predictions can be made concerning the future status of the DFS. In conducting this analysis, our general approach was to review past threat trends and the observed DFS response, followed by a prediction of future trends. We used a general timeframe of 40 years for examining both past and future trends, noting that the timeframe for the future trends is dependent on available data and can vary for specific threats. We also took uncertainty into account. Because predictions always have some uncertainty—and the further we try to look into the future, the greater the uncertainty—a general period of 20 to 40 years allowed for sufficiently reliable use of available data to inform our projections.

In the following analysis, we first evaluate the status of the DFS throughout all its range as indicated by the five-factor analysis. We then consider whether the species is in danger of extinction or likely to become so in any significant portion of its range (SPR).

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

This factor focuses on habitat changes caused by residential development, sea level rise, and commercial timber harvest, as well as the habitat-related effects on DFS viability, both rangewide and on DFS subpopulations (see *Recovery Criterion 1, Population Viability* above). There are 22 subpopulations, representing groups of interbreeding DFS (Hilderbrand *et al.* 2007, p. 73), within the subspecies' current range (USFWS 2012, figure 5, table 7). While they occur in three States, the only Virginia population is a barrier island population that was established on Chincoteague National Wildlife Refuge (NWR) and is completely protected from residential development or commercial timber harvest. We do not, therefore, analyze development or timber harvest for the Virginia portions of the Delmarva Peninsula where DFS do not occur; however, the impact of sea level rise on this population is addressed.

Potential habitat loss due to development: Past development trends. The Delmarva Peninsula is basically a rural landscape, but the human population has increased since the DFS was listed. For instance, in the eight Maryland counties that harbor DFS, the human population increased from approximately 200,000 to 300,000 between 1970 and 2000 (*http://planning.maryland.gov/msdc/popproj/TOTPOP_PROJ08.pdf*). Consequently, acres of developed land increased from 3 percent of the landscape in 1973 to 8 percent in 2002 by one estimate (Maryland Department of Planning 2008, pp. 22–23). Another land-use classification scheme showed an increase to 11 percent developed in 2002 and 12 percent in 2010 (*http://planning.maryland.gov/OurWork/landuse.shtml*). Despite these increases and several areas that are continuing to grow, the majority of the Delmarva Peninsula is rural with approximately 45 percent agricultural land and 35 percent forest (USFWS 2012, table 2).

During the same time period, a variety of State laws and programs were put in place to counteract the rate of development (USFWS 2012, appendix D). These include the Maryland Forest Conservation Act, which requires offsetting forest clearing for development with forest protection or afforestation, and the Maryland Critical Area Law, which now requires that the land within 200 feet of tidal waters cannot be developed and that the forest in this zone must be maintained.

In addition, three State programs that protect private land from development on a voluntary basis have resulted in conservation of 79,066 ha (195,377 ac) of private land in the DFS's Maryland range (USFWS 2012, table 3). These programs include the Maryland Environmental Trust, the Maryland Agricultural Land Protection Fund, and the Maryland Rural Legacy Program. Together, these programs protected about 3,642 ha/year (9,000 ac/year) between 2000 and 2008 (USFWS 2012, chart 4), which is triple the rate of development between 1973 and 2002 (Maryland Department of Planning 2008, pp. 22–23).

Overall, approximately 30 percent of DFS-occupied forest is protected from development, and these lands are widely distributed across its range (USFWS 2012, table 5). Additional acres of protected forest occur outside the current range of the DFS and provide areas for further expansion (USFWS 2012, figure 7). The 15,995 ha (39,524 ac) of occupied forest that is protected from development could contain a DFS population that is about 45 times the size of the MVP determined through the PVA (Hilderbrand *et al.* 2007, entire). Nonetheless, 70 percent of DFS-occupied forest occurs on private land that is legally unprotected from development; thus, future losses from development are likely.

Potential habitat loss due to development: Future development trends. The Maryland Department of Planning (*http://planning.maryland.gov/msdc/popproj/TOTPOP_PROJ08.pdf*) predicts that by 2030 the human population in the eight Maryland counties where DFS occur will reach 400,000 (in 2000, the human population was roughly 300,000). Further, under the worst-case scenario, where Smart Growth policies are not implemented and sprawl is maximized, the amount of developed land in the eight Maryland counties could encompass 14 percent of the landscape by 2030. The greatest growth is expected to occur in the vicinity of Salisbury and Ocean City, which are outside the current range of the DFS. However, sprawl development in Queen Anne's County and the area around Easton is also identified in the report and would occur within the northern portion of the squirrel's range (the ''northern portion'' is commonly understood to include Kent, Queen Anne's, Talbot, and Caroline Counties in Maryland, while the ''southern portion'' is understood to include the Sussex County DFS population in Delaware, the southern four counties in Maryland, and the DFS population in Accomack County, Virginia).

We assessed the potential threat of DFS habitat loss stemming from future development by overlaying the acres of existing occupied forest with areas projected to be lost to development, including: (1) Smart Growth areas (excluding the acres that are protected by easement), (2) areas where development projects are already planned, and (3) areas that are projected to be lost by 2030 if Smart Growth policies are not implemented (USFWS 2012, figure 11).

Overall, 3 percent (2,283 ha or 5,643 ac) of the forest area currently occupied by DFS is anticipated to be lost to development by 2030. The reason for this relatively low level of loss is that most of the future development on the Delmarva Peninsula is projected to occur outside the current range of the DFS (e.g., Kent Island, Salisbury, and Ocean City). Development within the current range is expected to affect two

small, isolated DFS subpopulations where extirpation already appears likely. Although loss of these two isolated populations is likely, together they constitute less than 0.5 percent of the total MVPs, and their loss will, therefore, have a negligible effect on the extinction risk for the rangewide DFS population. While we do not currently have additional projections of development past 2030, we expect most future development on the Delmarva Peninsula beyond this time will continue to occur outside the current range of the DFS. Additionally, as described below, with anticipated continued expansion of DFS populations and State laws providing protection of DFS forest habitat, we expect any future loss of habitat due to development to have a negligible effect on the extinction risk for the rangewide DFS population.

The discovery of additional occupied forest areas may offset this projected loss of occupied forest, resulting in little change to the overall area of the distribution. In the past 10 years, discovery of new occupied forest has occurred at the rate of 763 ha/year (1,887 ac/year). We might expect the rate of discovery of new occupied forest to diminish in the future, but even if we discover new occupied forest at half that rate, or 382 ha/year (944 ac/year), we will have offset anticipated losses from development in 6 years.

In summary, in the past 40 years, development has eliminated some forested habitat, but the DFS range has expanded despite these losses. Although past increases in DFS occurrences are attributable in part to the cessation of hunting and DFS translocations, the number and distribution of naturally occupied woodlands have also increased. The discovery of new occupied forest is anticipated to exceed anticipated losses of forest from future development. Protection of DFS-occupied forest from future development occurs through several State conservation easement programs, and 30 percent of the occupied habitat is permanently protected from development through easements or public ownership. State laws are now more protective of DFS forest habitat than they were in the past, and these protections are likely to continue into the future, resulting in conservation of additional forest habitat. Given the projection that future losses are likely to be relatively small, combined with the availability of ample unoccupied habitat for DFS to move into, the loss of occupied habitat due to development does not pose an extinction risk for the DFS.

Potential loss of forest habitat from sea level rise. The Delmarva Peninsula is a low-lying landform, and increases in the relative sea level of the Chesapeake Bay can flood and kill shoreline forests that constitute DFS habitat. Although these dynamic processes have been occurring for centuries, relative sea level rise has occurred at an accelerating rate (Sallenger *et al.* 2012,entire; Boesch *et al.* 2013, entire). The DFS is not a coastal species in that it does not depend on coastal habitats specifically, and this moderates its vulnerability to sea level rise compared to marsh-dependent species. In addition, it uses a wide range of mature forest types across the Peninsula and a GIS analysis indicates over 80 percent of the current range would remain, even after inundation by 0.61 m (2 ft) of water. However, the squirrel does occur in forest blocks along the edge of the Chesapeake Bay where sea level rise has occurred in the past and will continue into the future.

Sea level rise in the past. The forces of land subsidence and sea level rise have resulted in a long history of island loss and formation in the Chesapeake Bay. In the last century, these forces combined to produce a relative sea level rise in the Chesapeake Bay region of about 3.4 millimeters (mm)/year (0.134 inches (in)/year) (National Oceanic and Atmospheric Administration 2006, p. 4), or approximately 0.3 m/100 years (1 ft/100 years) (National Wildlife Federation 2008, p. 2).

Loss of some forest stands in southern Dorchester County is already apparent where shoreline timber stands at the lowest elevations have been killed by saltwater from recent hurricanes. Although we cannot precisely quantify how much occupied habitat has been lost in the past 40 years, the LiDAR analysis of forest height and canopy cover has identified at least 68 ha (170 ac) of forest at the edge of coastal marshes that are now standing dead trees.

Hurricanes are part of the process that results in loss of forest from saltwater as sea levels rise. Saltwater moves further into forested areas during associated storm surges, which can kill or weaken trees. Hurricanes have always been part of the weather in this area and there is no evidence that hurricanes *per se* pose a problem for DFS. Even during super-storm Sandy in October 2012, cameras set out to monitor DFS in woods near the Atlantic coast recorded DFS onsite after the hurricane passed. While there is always the possibility that hurricanes or any storm can topple trees used by DFS, the major effect is the additional push of saltwater into more upland areas, killing coastal forest trees.

Future effects of sea level rise and climate change. Sea level rise in the Chesapeake Bay is certain to continue in the future, and the rate of change is likely to be even higher than in the past (National Wildlife Federation 2008, pp. 16–17; Sallenger *et al.* 2012, entire; Boesch *et al.* 2013, entire). While the precise rate of change may be debated, we have chosen to evaluate a 0.61-m (2-ft) inundation scenario to determine the extent of occupied forest that may be lost through the combined effects of sea level rise and subsidence (i.e., relative sea level rise) despite uncertainty about when this might occur. A sea level rise of this magnitude (0.61 m or 2 ft) is predicted to occur by about 2050 using the high or extreme scenario and by 2100 using the low scenario (Boesch *et al.* 2013, p. 15).

To determine the acres of DFS-occupied forest that might be lost due to sea level rise, we conducted a GIS analysis of DFS-occupied habitat overlaid by an inundation level of 0.61 m (2 ft) on the landscape by 2050 (USFWS 2012, p.31). Although we considered this to be the worst-case scenario for the next 40 years (Boesch *et al.* 2013, p. 15), it may be a more likely scenario over a 60- to 100-year timeframe (Boesch *et al.* 2013, p. 15; National Wildlife Federation 2008, p. 16).

Our GIS analysis indicated that the most severe effects of sea level rise on DFS by 2050 will be seen in the southwestern portion of Dorchester County, Maryland (USFWS 2012, figure 12). Here, the landscape is a convoluted shoreline bounding a mix of marsh and forest. With 0.61 m (2 ft) of inundation, the marsh would be submerged, islands of forest would gradually become smaller, and eventually the forest is likely to be killed by saltwater intrusion. Using this inundation scenario, 9,332 ha (23,060 ac) of currently occupied forest would either be lost or remain only on isolated islands (USFWS 2012, figure 12). In addition, 4,409 ha (10,897 ac) of habitat along the remaining southern edge of the county would eventually deteriorate, causing DFS to move inland. Noting that the ability of DFS to move into connected habitat likely reduces the effects on this subspecies of forest losses at the coastal marsh fringe, we nonetheless consider this as habitat loss. Remaining losses are scattered in small areas throughout the range, including some losses at the Chincoteague population (USFWS 2012, figure 12).

The predicted habitat losses from sea level rise are thus greatest in

southwestern Dorchester County, but even if these losses were to occur immediately, the area's remaining 23,632 ha (58,398 ac) of occupied habitat would continue to support a highly abundant DFS population with a negligible risk of extinction. Moreover, the habitat in the northeastern portion of this area is connected to existing occupied forest farther inland (USFWS 2012, figure 9). We anticipate that DFS will move into a large tract of State-owned forest that will mature into suitable DFS habitat within the next 10 years. Analysis of forest connectivity indicates that this area either already allows or will soon allow for DFS expansion, and it connects the Dorchester DFS subpopulation to forest tracts in Caroline and Sussex Counties (USFWS 2012, figure 10). Although sea level rise may cause streams and rivers to widen and pose more of a barrier than they currently do, forested paths will still be available to provide DFS access to habitat in the inland portions of Dorchester County. Thus, losses in the southwestern portion of the county could be tolerated, but they will likely be mediated by a population shift to the large interior portions of the county.

Given our current understanding of DFS habitat use, dispersal, and population dynamics, the expected DFS response to deterioration of coastal woodlands from sea level rise is the gradual movement of some DFS to more inland areas. The DFS is known to travel across areas of marsh and can move at least 40 to 50 m (131 to 164 ft) across marshland between forested islands and may also move across frozen marsh in the winter. We acknowledge that even with the squirrel's ability to move, some isolation and loss of individuals are likely to occur, and a portion of the squirrel's habitat in southwestern Dorchester County will become degraded or lost. Nonetheless, because of the large size of the Dorchester subpopulation that would remain, as well as the presence of currently unoccupied but suitable habitat for the DFS, we conclude that habitat loss due to sea level rise will not be a limiting factor to the future viability of this subspecies.

The 0.61-m (2-ft) inundation scenario does not play out the same in other parts of the range. In the series of small peninsulas in northwestern Dorchester County called the ''neck region,'' this scenario results in shrinkage of available habitat but does not create islands and leaves habitat for DFS to move into (USFWS 2012, figure 12). This is also the case in other portions of the squirrel's range near the Chesapeake Bay and the Atlantic Coast. Some additional small areas of occupied habitat may be lost, but the gradual loss can be accommodated by shifts in DFS home ranges to adjacent but currently unoccupied habitat.

The most coastal population of DFS is a translocated population introduced in 1968 to Chincoteague NWR, a barrier island in Virginia that could be severely affected by sea level rise (National Wildlife Federation 2008, p. 69). The refuge's draft Comprehensive Conservation Plan (draft available at: *http://www.fws.gov/nwrs/threecolumn.aspx?id=2147550165*) addresses this issue, and the refuge may consider future land acquisitions on the Delmarva Peninsula mainland. Chincoteague NWR will continue to manage for DFS into the future whether or not the species remains listed. In addition, translocations of DFS to areas outside refuge boundaries at some point in the future are possible.

It is not clear how climate change effects may alter the nature of the forests of the Delmarva Peninsula. If climate change effects result in warmer conditions in the long term, the loblolly pine-dominated forests on the southern half of the Delmarva Peninsula may become even more predominant. However, since DFS occur in forests that range from all hardwoods to all pines and prefer a good mix of hardwoods and pines with diverse tree species, shifts in the species composition of these forests are not likely to become a significant threat for the squirrel.

In summary, DFS distribution has increased in the past 40 years even with some sea level rise occurring (at a rate of approximately 0.3 m (1 ft) in 100 years). In the next 40 to 50 years, under a worst-case scenario of a 0.61-m (2-ft) rise in sea level, we predict some deterioration of forests in certain areas along the Chesapeake Bay and the Atlantic Coast (USFWS 2012, figure 12), but we also anticipate population expansion and shifts in DFS home ranges into suitable but currently unoccupied habitat that is available in the interior of the Delmarva Peninsula. Although some concern has been expressed about the likelihood of such expansion (CBD 2013), the analysis of habitat suitability, connectivity, and the range expansion documented in the last 15 years provides a strong basis for this expectation. Thus, available data indicate that the loss of habitat due to sea level rise does not pose an extinction risk to the DFS.

Combined effects of development and sea level rise. Although no individual threat under Factor A threatens this species with extinction now or in the foreseeable future, we examined the combined effects of the most pervasive stressors—future habitat loss from development and sea level rise—using a GIS analysis (USFWS 2012; figure 5, table 7).

Beginning with the total area of forest occupied in 2010, we subtracted all possible projected losses from development and sea level rise. We then added a conservative estimate of the average acres of occupied forest that have been discovered annually for the last 10 years. We considered this for the entire range and for 22 subpopulations within the range. We also estimated the number of MVPs (calculated as a population containing 65 females, or 130 animals total) in each subpopulation (USFWS 2012, pp. 41–42) to gauge the extinction risk of each subpopulation. This enabled a spatial analysis of how the impacts of both development and sea level rise might interact.

As of 2010, there were 54,429 ha (134,496 ac) of DFS-occupied habitat distributed among 22 subpopulations, with an estimated DFS population approximately 171 times the size of an MVP (USFWS 2012, table 7). Apart from two small, isolated subpopulations that are likely to become extirpated because of both their size and location, the majority of the 22 subpopulations have some likelihood of remaining at or above current population levels given that they are either large enough to contain a population comparable to one or more MVPs or, if smaller, they are located close to other subpopulations (USFWS 2012, table 7, figure 5).

If we subtract the habitat that might be lost from development and sea level rise and do not count any expected discoveries of additional occupied habitat, we still retain 37,795 ha (93,393 ac) of occupied forest and a rangewide population of 17,000 to 20,000 DFS, that is, 120 times the MVP size. Ninety-five percent of DFS are found in the 11 largest subpopulations, all of which are considered likely to stay at or above current population levels, because they contain at least one MVP after all losses. With expected discovery of at least some additional occupied forest, it is more likely that the total DFS-occupied area will increase and that subpopulations are likely to become more connected and even more likely to remain at or above current levels into the foreseeable future. Thus, even with the cumulative loss of habitat from development and sea level rise, the factors analyzed do not endanger or threaten this species with extinction now or in the foreseeable future.

Loss of mature forest from timber harvest. Unlike development and sea

level rise, timber harvest does not result in permanent loss of habitat. A timber harvest is followed by growth of a young forest, resulting in a landscape mosaic of mature and regenerating forest stands. DFS are resilient to timber harvests when there is adjacent habitat they can move into (Paglione 1996 pp. 69–73; Bocetti and Pattee 2003, entire). The major threats that could be posed by timber harvests are, therefore, (1) the prevalence of short-rotation timber harvests, where trees are harvested before they mature enough to become DFS habitat; and (2) harvest rates that exceed growth rates and result in a continual decline of mature forest.

Potential threat from short-rotation pine forestry. Short-rotation pine forestry involves harvesting trees at approximately 25 years of age for pulp and other fiber products. Since it takes approximately 40 years to produce suitable DFS habitat, forests harvested at 25 years of age never become suitable for DFS breeding. In the past, there were two large corporations managing for short-rotation pine on the Delmarva Peninsula. However, these industries have effectively left the Delmarva Peninsula, and in 1999 the State of Maryland acquired 23,471 ha (58,000 ac) of land to be managed for sustainable sawtimber production and wildlife values. These lands, collectively administered as the Chesapeake Forest Lands, are scattered parcels throughout the southern four Maryland counties (USFWS 2012, figure 13). In addition, 4,202 ha (10,384 ac) of forest land previously owned and managed for short-rotation pine are now owned by the State of Delaware. All these lands, on which short-rotations formerly precluded DFS habitat, will now be protected from development and managed for sustainable sawtimber harvest and wildlife habitat objectives. With compatible management, these forests will provide suitable habitat for DFS into the foreseeable future.

Most of this land is currently in early stages of forest succession; 48 percent of Maryland Chesapeake Forest Lands in 2013 were less than 25 years old and about 30 percent were at least 41 years old (Maryland DNR 2013, p. 43). Within 10 years, however, most of the forested areas will be over 26 years of age and there will be more than 30 percent of the stands over 41 years and potentially suitable for DFS (Maryland DNR 2013, p. 43). Moreover, DFS management has been integrated into the Sustainable Forest Management Plan for Chesapeake Forest Lands (Maryland DNR 2013, pp. 92–96), which identifies a total of 17,618 ha (43,535 ac) as DFS Core Areas and DFS Future Core Areas where management is for 60- to 80-year rotations. According to the management plan, at least 50 percent of the DFS Core Areas must be maintained in suitable DFS habitat at any one time, with a management emphasis on mature mixed pine/hardwood stands (Maryland DNR 2013, p. 94). Thus, while most of the Chesapeake forest lands are currently unoccupied by DFS and are too young to provide breeding habitat, these areas are protected from development and will provide suitable DFS habitat in the near future. Overall, the Chesapeake Forest Lands represent a future of protected forest areas managed for sawtimber where DFS can survive and grow in numbers. This land acquisition substantially removes the threat posed by short-rotation pine management and provides a positive outlook for future habitat for the DFS on the lower portion of the Delmarva Peninsula.

Timber harvest across the landscape in the past. The 2007 review (USFWS 2007, pp. 17–20) evaluated the threat from timber harvest using the U.S. Forest Service's Forest Inventory and Analysis data (Frieswyk 2001, entire) in conjunction with a database of sediment-and-erosion-control permits obtained from the counties. Although these data were the best available at the time, there was some concern about the possibility of underestimating harvest rates based on the number of permits issued. Conversely, this analysis approach also led to a concern about overestimating harvest rates, because there was some evidence that individuals may obtain the permits in anticipation of good harvesting conditions but then not actually conduct the harvest. This particularly appeared to be the case in Dorchester County. Consequently, since the 2007 review we have looked at corollary means of understanding timber harvest rates (e.g., direct reports from State foresters in each county and LiDAR analysis), while acknowledging that each technique has some potential biases and results are not comparable. Due to the latter issue of comparability, the 2012 status review's (USFWS 2012, table 6) estimates of acres harvested in each county used the sediment-and-erosion-control permits simply because these data are collected in the same way over time. The exception to this is the estimate for Sussex County, Delaware, which is considered to represent actual acres harvested on the ground, because permits are not granted until immediately before the harvest.

The average annual harvest in the most recent years preceding this review is substantially less than in previous years, (generally prior to 2005) according to the permit database (USFWS 2012, table 6). In the four southern Maryland counties, the average annual harvest has dropped from approximately 1,050 ha (2,594 ac) prior to 2005 to approximately 303 ha (749 ac) since 2005. The average size of the harvest in these counties has also decreased from an average of 22 ha (54 ac) to an average of 15 ha (36 ac). In the northern four counties in Maryland, annual harvest was low prior to 2005 and stayed about the same in more recent years, with recent estimates averaging 235 ha (582 ac). The size of harvests was also about the same and averaged 14 to 15 ha (35 to 38 ac). Given that most forest harvest occurs in the southern counties, the result is a substantial decrease in total acres harvested since 2005.

This is also the case in Delaware, where we find the permit database to be very accurate. In Sussex County, the annual harvest rate in the last 4 years was half of what was generally harvested between 1998 and 2005. Not only has the annual harvest acreage declined, but so has the size of individual harvest areas. In the mid- to late 1990s, the typical size of timber harvests ranged from 12.1 to 28.3 ha (30 to 70 ac), while over the past 5 years the average size of timber harvests ranges from 8.9 to 19.4 ha (22 to 48 ac).

Among other reasons for this overall reduction in timber harvests, economic events have resulted in the closure of several sawmills on the Delmarva Peninsula; this was beginning to happen even before the 2008 recession. The market for timber has declined dramatically, and the loss of sawmills is both a cause and a reaction to lower demand. Prices for timber remain very low, and the incentives to harvest are thus low. As discussed below, additional factors suggest that reduced harvest levels are likely to continue in the future.

Future Threats Posed by Timber Harvest. Although it is very difficult to predict future market forces, several trends suggest future timber harvests might remain smaller in size and occur less frequently. An assessment of forests in the Chesapeake Bay area (Sprague *et al.* 2006, pp. 22–24) refers to trends in fragmentation and parcelization of forests in the Chesapeake Bay region. Parcelization is the subdivision of large blocks of land into multiple ownerships. As forest lands are subdivided, landowners tend to change from management of their woodlands for timber to management for aesthetics and wildlife values. The National Woodland Owner Survey conducted by the U.S. Forest Service found that in Maryland

45 percent of the woodland owners own less than 20 ha (50 ac) of woods (U.S. Department of Agriculture, 2012), whereas most clearcuts in the past were 9 to 20 ha (22 to 50 ac) in size. Thus, almost half of the woodland owners do not own enough woodland to accommodate harvests the size of an average clearcut without losing nearly all of their woods.

In addition, these owners are not likely to be managing for timber as a source of income. This ownership pattern also reflects the ''gentrification'' of the eastern shore of Maryland, with landowners becoming less likely to be farmers or foresters and more likely to be commuters or retirees that do not earn their livings from the natural resources on their properties. The proportion of the population in this area that is greater than 65 years of age has been increasing in the past and is projected to increase in the future (*www.mpd.md.state.md.us./msdc/county*). Although these landowners may harvest small portions of their woods, they are likely to retain some portions as well. This continued parcelization and gentrification is expected to reduce the number of landowners managing for timber values, reduce the size of timber harvests, and result in an overall reduction in the total acres harvested. This trend is already apparent in the reduced average size of timber harvests indicated by the sediment-and-erosion control-permit databases discussed above.

In summary, the threat posed by short-rotation pine timber harvests has largely been eliminated by the transfer of 23,472 ha (58,000 ac) to the State of Maryland and 4,202 ha (10,384 ac) to the State of Delaware to be managed for sawtimber and wildlife habitat. Additionally, the timber harvest rates on private lands across the eight Maryland counties have declined dramatically in the past several years. Even if harvest rates were to increase in the future and approach the levels reported in the 2007 status review (USFWS 2007, pp. 19–20), the impacts would not be significant, because DFS are known to have expanded their range even at that level of harvest (i.e., under past harvest rates, approximately 55 percent of the forest in the eight Maryland counties was mature forest either occupied by or potentially suitable for DFS (USFWS 2012, table 4)). The Delmarva Peninsula-wide forest mapping also indicates that ample, well-connected habitat is available for DFS expansion, even under past harvest rates. Nonetheless, future timber harvest on the shore is likely to be more limited than it has been in the past because of changes in the timber market and landownership patterns. And, importantly, the transfer of 27,674 ha (68,317 ac) of timber lands with sustainable management provisions to Maryland and Delaware will provide significant long-term conservation benefits for the DFS. These land transfers, in conjunction with available data on harvest rates across the range of the squirrel, suggest that timber harvest does not pose an extinction risk for the DFS.

Factor A summary. The current range of the DFS spans the northern and southern portions of the Delmarva Peninsula, from coastal areas to the interior of the Delmarva Peninsula. DFS inhabit a wide range of forest types from hardwood-dominated to pine-dominated forests and from wetland to upland forests, suggesting that the DFS would continue to remain at or above viable population levels under a variety of conditions. The wide distribution provides redundancy of occupied forest across the landscape, which also reduces extinction risk. Timber harvest rates in the past have not prevented population expansion, and the harvest rates are likely to be even lower in the future. We expect the rangewide DFS population to remain viable and to continue to occupy the full complement of landscapes and forest types on the Delmarva Peninsula. We conclude that habitat losses may occur in some areas from residential development or sea-level rise, but we expect the DFS population to remain at or above recovered levels, and, moreover, we do not expect such habitat losses to prevent overall expansion of the range in the future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overhunting has been posited as a factor in the original decline of this species. Squirrel hunting was common in the early and middle decades of the 20th century, and, given the DFS's larger size and tendency to be on the ground, they may have been preferred game over gray squirrels. Squirrel hunting was also a common way for young hunters to gain experience. Hunting of DFS in small, isolated woodlots or narrow riparian corridors could have resulted in local extirpations, and Taylor (1976, p. 51) noted that DFS remained present on large agricultural estates where hunting was not allowed, suggesting that these areas may have provided a network of refugia for DFS as the subspecies became extirpated elsewhere.

Hunting in the Past 40 Years. Hunting of DFS was banned through State regulations in 1972. Removal of hunting pressure, combined with other factors, may have allowed renewed population growth and expansion of the squirrel's range to its current extent. Coincidentally, squirrel hunting has declined in popularity in recent decades (replaced largely by deer hunting). Nationwide, squirrel hunting declined by 41 percent between 1991 and 2001, along with an overall decline in the number of citizens hunting (USFWS 2001, p. 5). Across Maryland, the number of hunters pursuing gray squirrels declined by almost half between 2000 and 2005, from about 19,000 to 10,000 hunters, while the number of hunters pursuing western fox squirrels (*Sciurus niger rufiventor*) in western Maryland dropped from about 3,000 to 1,800 (*www.dnr.state.md.us/wildlife/gpar/gpfur_table1.asp*). Although some hunters may mistake DFS for gray squirrels (despite educational efforts to help hunters differentiate between the two), this is likely a rare situation that has not prevented the DFS from expanding over the last 40 years.

Hunting in the Future. Discussions with our State partners suggest that DFS management after delisting would be conducted very carefully and that a hunting season would not be initiated in the immediate future. We recognize that a very restricted hunt could be conducted at sites where DFS are abundant without causing a population decline, and that State management agencies have the capability to implement careful hunting restrictions and population management; for instance, the reopening of the black bear (*Ursus americanus*) hunt in Maryland is a good example of a carefully and successfully managed hunt (Maryland Department of Natural Resources 2012, entire).

We nonetheless foresee only limited public interest in reinitiating a DFS hunt, coupled with strong public attitudes against hunting DFS. Public sentiment toward hunting in general has changed, with hunting for food, management of game populations, and animal population control considered acceptable, whereas hunting strictly for recreation is considered less acceptable (Duda and Jones 2008, p. 183). Given public attitudes, the declining interest in squirrel hunting, and the restrictions that we expect would be imposed on a renewed hunting program, hunting is highly unlikely to pose an extinction risk to the DFS in the foreseeable future.

C. Disease or Predation

Disease. Reports of disease in DFS are uncommon. Although other subspecies

of eastern fox squirrels are known to carry diseases such as mange and rabies, there is no documentation of these diseases in DFS, and there is no evidence or suspicion of disease-related declines in any local population (USFWS 2012, pp. 37–38).

Despite the lack of apparent vulnerability to date, however, the recent advent of white-nose syndrome affecting bats (Blehert *et al.* 2009, entire) and chytrid fungus affecting amphibians (Daszak *et al.* 1999, entire) demonstrates the uncertainty surrounding novel disease events. The life-history traits of DFS nonetheless make them less susceptible to these types of epizootics. First, DFS do not congregate in large numbers (such as bats in hibernacula), where disease can easily spread through a population. Second, early records describe the DFS as patchily distributed across its range (Taylor 1976, p. 7), and this continues to be the case; this patchy distribution makes it more difficult for disease to spread through the squirrel's range. Finally, DFS are not migratory or in an environment (as with aquatic species) where pathogens can readily disperse. There currently is no evidence of disease-related declines or any indication that DFS are particularly susceptibility to disease outbreaks, and we conclude that disease is neither a current nor future extinction risk for this subspecies.

Predation. Predators of DFS include the red fox (*Vulpes vulpes*), gray fox (*Urocyon cinereoargenteus*), red-tailed hawk (*Buteo jamaicensis*), bald eagle (*Haliaeetus leucocephalus*), and possibly domestic pets and feral animals (e.g., cats and dogs). Owls are probably not major predators, as camera surveys have found that DFS activity patterns rarely include dawn or evening hours, although the gray squirrel is active at these times. Morris (2006, pp. 35, 77) found that the majority of camera detections occurred between 8 a.m. and 5 p.m. with two peaks in activity at mid-morning and mid-afternoon.

Changes in predator numbers may cause some fluctuations in DFS numbers at a site (e.g., a DFS population may decline when red fox populations increase), but these types of events are sporadic and localized. Likewise, bald eagle numbers have dramatically increased in the Chesapeake Bay region over the past 40 years, but although they have been known to take DFS, they still prey primarily on fish. While feral dogs and cats may occasionally take DFS, such predation is not a rangewide threat. The DFS population has increased over the last 40 years despite ongoing predation, and we conclude that predation at these levels is not a current or future extinction risk for this subspecies.

D. The Inadequacy of Existing Regulatory Mechanisms

Several laws established in Maryland over the past 40 years provide substantial protections for DFS habitat (USFWS 2012, appendix D). The Maryland Critical Areas Act of 1984 designates all areas within 304.8 m (1,000 ft) of high tide as Critical Areas and originally prohibited development and forest clearing within 30.48 m (100 ft) of streams and the Chesapeake Bay. This law was amended in the spring of 2008 to increase this ''no-development or forest clearing buffer'' to 60.96 m (200 ft). These areas serve as corridors for DFS and as breeding habitat. The Maryland Forest Conservation Act of 1991 requires that, when a forested area is cleared and converted to other land use, other portions of the forest must be placed in an easement that will preclude development in perpetuity or, alternatively, other areas must be replanted to offset these losses. In addition, the State-implemented portions of the Clean Water Act protect the many forested wetlands where DFS occur.

Several State programs encourage voluntary conservation easements that protect lands from development; the Maryland Agricultural Land Protection Fund (MALPF), Maryland Environmental Trust (MET), and Rural Legacy Program collectively protected 3,624.4 ha (8,956 ac) per year from 2000 to 2008 in the eight Maryland counties where DFS occur. These programs protect 79,066 ha (195,377 ac) of private land in Maryland and similar programs in Delaware protect an additional 12,677 ha (31, 327 ac) in Sussex County (USFWS 2012, table 3).

Although in Delaware and Virginia the DFS occurs primarily on Federal and State land, private lands are protected for continued expansion. For example, Delaware also has an Agricultural Land Protection Program and a Forest Legacy Program, and, although these programs started later than in Maryland, they have already protected more than 12,677 ha (31, 327 ac) in Sussex County. The Virginia population is completely protected on Chincoteague National Wildlife Refuge, a coastal island, and expansion in Virginia would require additional translocations. However, the State owns lands that would be suitable for future translocations, and there are private lands protected by land trusts as well.

Overall, many State laws and programs that protect DFS and their habitat have been enacted or strengthened in the last 40 years, and it is likely that this State protection will continue. Currently, these regulatory mechanisms, together with other factors that address population and habitat trends, have reduced the threats identified for the DFS. We thus conclude that the inadequacy of existing regulatory mechanisms does not pose an extinction risk to the DFS.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The following factors have been identified as posing potential extinction risks to the DFS. The level of risk posed by each factor is assessed below.

Forest pest infestations. Under Factor A, we evaluated habitat loss as a result of development, sea level rise, and timber harvest. However, additional factors can affect forest health and its ability to provide suitable habitat for DFS, including forest pest infestations. Gypsy moth (*Lymantria dispar*) and southern pine bark beetle (*Dendroctonus frontalis*) outbreaks can decimate mature forest stands, although the affected stands will eventually regenerate. However, monitoring and spraying for gypsy moth control appears to have reduced this threat within the current range of DFS; infestations in the last several years have diminished in acreage and occurred in other parts of the State (Maryland Department of Agriculture, Forest Health Highlights 2007, 2008, 2009, entire).

Pine bark beetle infestation necessitated salvage cuts for a total of 809.37 ha (2,000 ac) scattered across the southern counties in the early 1990s, but monitoring and control efforts appear to have reduced this threat as well.

Overall, an analysis of forest-pest risk across counties in the Chesapeake Bay watershed found that most areas on the Eastern Shore where DFS occur have relatively low risk for insect infestations, with most having 3.8 to 10 percent of their area considered to be at risk (Sprague *et al.* 2006, p. 87). Although emergence of new forest pests is to be expected, the Maryland Department of Agriculture has a Forest Health Monitoring Program that conducts surveys to map and report forest-pest problems (Maryland Department of Agriculture, Forest Pest Management, 2012, entire). Forest-pest outbreaks are likely to recur and may increase if climate warms as projected; however, this threat appears to be localized and sporadic and, with existing programs to monitor and treat forest pest outbreaks, we conclude that it is not an extinction risk factor.

Vehicle strikes. Vehicle strikes are a relatively common source of DFS mortality. Similar to other species, the probability of DFS being hit by vehicles is dependent on the density of DFS in the area and the proximity of the road to habitat. The frequency of road kills has been shown to reflect general patterns of abundance of many species over large geographic areas or time periods (McCaffery 1973, entire; Earle and Kramm 1982, entire; Gehrt 2002, entire; MacPherson *et al.* 2011, entire).

Vehicle strikes of DFS tend to be reported more frequently in areas where DFS are abundant, even if traffic levels are relatively low, (e.g., Dorchester County). The conscientious reporting and collecting of DFS killed on roads at the Blackwater and Chincoteague NWRs, where DFS are very abundant, likely results in a more complete count of vehicle strikes than elsewhere. Vehicle strikes regularly occur at both refuges, yet DFS remain abundant in both places and have expanded their distribution at Chincoteague NWR despite vehicle strikes. Despite these local events, across their range and owing to their population biology, DFS populations continue to remain at current levels or expand, and we conclude that vehicle strikes alone are not a pervasive threat or an extinction factor for this species.

Summary of Factors A to E

A summary of our analysis of the five factors is provided in table 3 below. Based on our analysis, we conclude that no single factor or combination of factors, such as the combined effects of development, timber harvest, and sea level rise, poses a risk of extinction to the DFS now or in the foreseeable future.

TABLE 3—SUMMARY OF FIVE-FACTOR ANALYSIS UNDER THE ACT FOR DFS

Factor	Trends in past 40 years	Foreseeable trends in next 40 years	Does factor pose an extinction risk?
Habitat loss from development.	In the past 40 years, development increased from 3 to 8 percent of the eight Maryland counties; development has increased in Sussex County, Delaware, as well. Some habitat has been lost, but most development occurs near existing towns where DFS are not as prevalent, and development often occurs on agricultural rather than forest land.	Development is expected to increase to 14 percent of the land area in the 8 Maryland counties and in Sussex County, Delaware, as well. Most projected development will occur near urban areas where DFS do not occur. However, 3 to 4 percent of total DFS occupied habitat is expected to be lost to development. While these losses may cause some small subpopulations to disappear, the majority of the occupied habitat will continue to be available. Despite this development, the DFS distribution is expected to continue to grow as it has in the past.	No.
Habitat loss from sea level rise.	In the past, losses in occupied habitat have occurred in southern Dorchester County, although the acreage is not known. Sea level rise has occurred in the past at the rate of 3.5 mm per year (about 1 ft per 100 years).	Under an extreme scenario of 0.61-m (2-ft) inundation in 40 years, considerable acreage will be lost or isolated in southwestern Dorchester County. However, even if this loss occurred immediately, this subpopulation would still retain 71 times the MVP. The Dorchester County subpopulation would continue to be the largest subpopulation and is very likely to remain at levels well above the MVP.	No.
Habitat loss from timber harvest.	Sawtimber harvest has occurred throughout the Delmarva Peninsula. The harvest rate in Dorchester County was 927 ha (2,291 ac) per year. This estimate (possibly an overestimate) appears to have been sustainable, as DFS have remained present in Dorchester County and elsewhere despite these harvest rates.	Recent declines in timber harvest rates and mill closings may reduce the harvest rate for some time. Increasing parcelization of land will reduce the opportunities for large-scale timber production. Gentrification of the Eastern Shore will likely shift public values for forest management from timber production to management for aesthetics and wildlife. Thus, future timber harvest rates are not expected to exceed past harvest rates.	No.
Habitat loss from short-rotation pine management.	In the past, short-rotation pine harvests have occurred on approximately 58,000 ac of the eight Maryland Counties and 10,000 ac more in Sussex County, Delaware. These acres were typically harvested before they were mature enough to be DFS habitat.	Since 1999, these lands have been obtained by the States of Maryland and Delaware and are now managed for sawtimber, which will provide suitable DFS habitat. Thus, we now have 58,000 ac of land protected from development and managed for sawtimber, enabling use by DFS that was previously precluded.	No.
Overutilization	Hunting seasons have been closed since listing.	Hunting seasons are likely to remain closed. If opened, they would be limited and managed very carefully. Interest in squirrel hunting has declined significantly, and public attitudes toward hunting have changed to primarily support hunting species viewed as needing population management, such as deer.	No.
Disease or Predation	Disease and predation have not been significant threats for this species in the past 40 years.	These threats are not expected to increase, and the increasing distribution of the DFS lessens the impact that disease and predation could have on this species.	No.

TABLE 3—SUMMARY OF FIVE-FACTOR ANALYSIS UNDER THE ACT FOR DFS—Continued

Factor	Trends in past 40 years	Foreseeable trends in next 40 years	Does factor pose an extinction risk?
Inadequacy of regulatory mechanisms.	Several new Maryland laws have appeared in the last 40 years to help conserve forest areas. DFS occurrences in Delaware and Virginia are almost exclusively on protected lands.	In the next 40 years, forest conservation measures are expected to continue, and the programs that have begun in Maryland are expected to continue or increase as they have in the past. Easement programs that protect private lands from development have begun in Delaware and Virginia and are expected to increase in the future as well.	No.
Other natural or man-made factors.	Forest pests and vehicle strikes have occurred in the past 40 years to some extent but have not limited the expansion of the DFS distribution.	Forest pests and vehicle strikes are likely to continue to occur to some extent, but these factors have not limited growth of the subpopulations in the past and are not expected to in the future. As DFS populations increase in density, vehicle strikes could increase as the probability of vehicle strikes is primarily a function of animal abundance.	No.

Proposed Rangewide Determination

We have carefully assessed the best scientific and commercial information available regarding past, present, and future threats to the long-term viability of the DFS. The current range of DFS spans the northern and southern portions of the Delmarva Peninsula, comprising all three States, and extends from coastal areas to the interior of the Delmarva Peninsula. The DFS inhabits a variety of forest types, from hardwood-dominated to pine-dominated forests and from wetland to upland forests, indicating an underlying genetic variability or behavioral plasticity that should enhance the species' viability under changing environmental conditions. Its relatively wide distribution also provides redundancy of occupied forest across the landscape, which further reduces extinction risk, and its continued occupancy of woodlots over the past 20 to 30 years and the success of translocation efforts indicate considerable resilience to stochastic events. We thus expect the rangewide population of DFS not only to remain at recovery levels but to grow and continue to occupy the full complement of landscapes and forest types on the Delmarva Peninsula.

The DFS has met the recovery criteria for considering delisting, and the analysis of potential threats shows that the range and distribution of the subspecies is sufficient to withstand all foreseeable threats to its long-term viability. We note, further, that the PVA threshold of 95 percent probability of persistence over 100 years is indicative of an even higher probability of persistence over the foreseeable future, defined as the next 40-years. After assessing the best available information, we have determined that the DFS is no longer in danger of extinction throughout all of its range, nor is it likely to become so in the foreseeable future.

Significant Portion of the Range Analysis

Background

Having determined that the DFS is not endangered or threatened throughout all of its range, we next consider whether there are any significant portions of its range in which the DFS is in danger of extinction or likely to become so. Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to becomes so throughout all or a significant portion of its range. The Act defines ''endangered species'' as any species which is ''in danger of extinction throughout all or a significant portion of its range,'' and ''threatened species'' as any species which is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The term ''species'' includes ''any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature.'' We published a final policy interpreting the phrase ''Significant Portion of its Range'' (SPR) on July 1, 2014 (79 FR 37578). The final policy states that (1) if a species is found to be endangered or threatened throughout a significant portion of its range, the entire species is listed as endangered or threatened, respectively, and the Act's protections apply to all individuals of the species wherever found; (2) a portion of the range of a species is ''significant'' if the species is not currently endangered or threatened throughout all of its range, but the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction or likely to become so in the foreseeable future, throughout all of its range; (3) the range of a species is considered to be the general geographical area within which that species can be found at the time the Service or the National Marine Fisheries Service makes any particular status determination; and (4) if a vertebrate species is endangered or threatened throughout an SPR, and the population in that significant portion is a valid DPS, we will list the DPS rather than the entire taxonomic species or subspecies.

The SPR policy is applied to all status determinations, including analyses for the purposes of making listing, delisting, and reclassification determinations. We use standard procedures for analyzing whether any portion of the range is an SPR, regardless of the type of status determination we are making. The first step in our analysis of the status of a species is to determine its status throughout all of its range. If we determine that the species is in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range, we list the species as an endangered species (or threatened species) and no SPR analysis is required. If the species is neither in danger of extinction nor likely to become so throughout all of its range, we next determine whether the species is in danger of extinction or likely to become so throughout a significant

portion of its range. If it is, we list the species as an endangered species or a threatened species, respectively; if it is not, we conclude that listing the species is not warranted.

When we conduct an SPR analysis, we first identify any portions of the species' range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be both significant and endangered or threatened. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that (1) the portions may be significant, and (2) the species may be in danger of extinction in those portions or likely to become so within the foreseeable future. We emphasize that answering these questions affirmatively is not a determination that the species is endangered or threatened throughout a significant portion of its range—rather, it is a step in determining whether a more detailed analysis of the issue is required. In practice, a key part of this analysis is questioning whether the threats are geographically concentrated in some way. If the threats to the species are affecting it uniformly throughout its range, no portion is likely to have a greater risk of extinction, and thus would not warrant further consideration. Moreover, if any concentration of threats applies only to portions of the range that clearly do not meet the biologically based definition of ''significant'' (i.e., the loss of that portion clearly would not be expected to increase the vulnerability to extinction of the entire species), those portions will not warrant further consideration.

If we identify any portions that may be both (1) significant and (2) in danger of extinction or likely to become so, we engage in a more detailed analysis to determine whether these standards are indeed met. As discussed above, to determine whether a portion of the range of a species is significant, we consider whether, under a hypothetical scenario, the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction or likely to become so in the foreseeable future throughout all of its range. This analysis considers the contribution of that portion to the viability of the species based on the conservation biology principles of redundancy, resiliency, and representation. (These concepts can similarly be expressed in terms of abundance, spatial distribution, productivity, and diversity.) The identification of an SPR does not create a presumption, prejudgment, or other predetermination as to whether the species in that identified SPR is endangered or threatened. We must go through a separate analysis to determine whether the species is in danger of extinction or likely to become so in the SPR. To determine whether a species is endangered or threatened throughout an SPR, we will use the same standards and methodology that we use to determine if a species is endangered or threatened throughout its range.

Depending on the biology of the species, its range, and the threats it faces, it may be more efficient to address either the significance question first, or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is ''significant.''

SPR Analysis for DFS

Applying the process described above, we evaluated the range of the DFS to determine if any area could be considered a significant portion of its range. As mentioned above, one way to identify portions for further analyses is to identify any natural divisions within the range that might be of biological or conservation importance. Based on examination of the recovery plan (USFWS 1993, 2003; entire) and other relevant and more recent information on the biology and life history of the DFS, we determined that there are no separate areas of the range that are significantly different from others or that are likely to be of greater biological or conservation importance than any other areas. We next examined whether any threats are geographically concentrated in some way that would indicate the species could be in danger of extinction, or likely to become so, in that area. Through our review of potential threats, we identified some areas where DFS are likely to be extirpated, including areas in Queen Anne's County, Maryland, where DFS distribution is scattered and relatively isolated by roads and water, and where future development is anticipated (see discussion of future development trends under Factor A). We thus considered whether this area in the northern portion of the range (see Factor A) may warrant further consideration as a significant portion of its range.

As discussed previously, we anticipate 3 percent of the forest area currently occupied by DFS to be lost to development by 2030. This development would affect two small, isolated subpopulations in Queen Anne's County that together constitute less than 0.5 percent of the rangewide population. Additionally, the Queen Anne's County's landscape is similar to nearby Kent, Talbot, and Caroline Counties in Maryland in that it has hardwood-dominated forest patches in a landscape of primarily agricultural land (USFWS 2012, table 2) and does not represent a unique habitat type or ecological setting for the species. While there is projected localized loss of habitat in areas of Queen Anne's County (see Factor A), five large DFS subpopulations are expected to remain viable across this broader northern portion of the current range. We consider these subpopulations to be resilient, and their distribution provides the necessary redundancy to offset loss of local populations. The areas that may be lost due to development represent a very small proportion of the range (3 percent), as well as a very small proportion of the total population of the species (0.5 percent). Moreover, if the areas expected to be lost due to development were in fact lost, that loss would not appreciably reduce the long-term viability of the subpopulation, much less cause the species in the remainder of its range to be in danger of extinction or likely to become so. Therefore, there is not substantial information that the small portions of the range in Queen Anne's County may be a significant portion of the DFS's range.

We also expect loss of DFS-occupied forests from sea level rise in Dorchester County, Maryland. The anticipated losses in this area are on the southwestern periphery of the habitat supporting the largest subpopulation of DFS. However, as discussed under Factor A, above, these losses do not threaten either the subpopulation or the subspecies with a risk of extinction, as there is ample unoccupied and sufficiently connected habitat for displaced squirrels to colonize (along with the evidence provided by successful translocations of the ability of DFS to readily colonize new areas). Moreover, if the area expected to be lost were in fact lost, that loss would not appreciably reduce the long-term viability of the subpopulation, much less cause the species in the remainder of its range to be in danger of extinction or likely to become so. Therefore, there is not substantial information that the

portion of the range that is expected to be lost from sea level rise may be a significant portion of the DFS's range.

These are the only two portions of the range that contain populations that may be affected by potential threats that could cause the species to be in danger of extinction or likely to become so or result in possible extirpation in those portions and thus warranting review for an SPR determination. Finding that the potential losses in small areas of Queen Anne's County do not cause cascading vulnerability or reflect unique areas that are not represented elsewhere in the species' range, and finding that loss of the area of Dorchester County anticipated to be lost to sea level rise would not cause the remainder of the species to be in danger of extinction or likely to become so, or affect the continued viability of the Dorchester subpopulation, we do not consider this subspecies to be in danger of extinction, or likely to become so in the foreseeable future, in any significant portion of its range. Further, given consideration (4) in the final SPR policy (see Significant Portion of the Range Analysis, *Background* above), and having not found the basis for an SPR determination on the grounds of either significance of, or threat to, a portion of the current range of the DFS, we also find that a DPS analysis is not warranted.

The DFS's current and projected resiliency, redundancy, and representation should enable this subspecies to remain at recovered population levels throughout all of its range, and even expand its range over the foreseeable future. Having assessed the best scientific and commercial data available and determined that the DFS is no longer in danger of extinction throughout all or significant portions of its range, nor is it likely to become so in the foreseeable future, we are proposing to remove this species from the List of Endangered and Threatened Species under the Act.

Effects of the Rule

This proposal, if made final, would revise 50 CFR 17.11(h) to remove the DFS from the Federal List of Endangered and Threatened Wildlife. The prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, would no longer apply to this species. Federal agencies would no longer be required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect the DFS. There is no critical habitat designated for this species.

This proposed rule, if made final, would also remove the experimental population status of the DFSs that were introduced to the Assawoman State Wildlife Management Area in Sussex County, Delaware. This designation was established on September 13, 1984 (49 FR 35951–35955).

Post-Delisting Monitoring Plan

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been recovered and delisted. The purpose of this requirement is to develop a program that detects the failure of any delisted species to sustain itself without the protective measures provided by the Act. If, at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

Notice of availability of a draft DFS post-delisting monitoring plan. We are announcing the availability for public review of a draft post-delisting monitoring plan for the DFS. The draft PDM plan can be obtained upon request from the Chesapeake Bay Field Office (see **ADDRESSES** above) and is posted in the docket on *http://www.regulations.gov* and on the Chesapeake Bay Field Office Web page at: *http://www.fws.gov/chesapeakebay*.

This draft plan builds upon and continues the research and monitoring that have been conducted to date. In general, the plan proposes that the Service and State natural resource agencies will: (1) Continue to map all DFS sightings and occupied forest to delineate the distribution and range, and (2) assess the occupancy of DFS in a sample of forest tracts to estimate the relative proportion of viable DFS populations versus extirpations across the range.

The draft PDM plan identifies measurable management thresholds and responses for detecting and reacting to significant changes in the DFS's protected habitat, distribution, and ability to remain at recovered population levels. If declines are detected equaling or exceeding these thresholds, the Service, along with other post-delisting monitoring participants, will investigate causes, including consideration of habitat changes, stochastic events, or any other significant evidence. Results will be used to determine if the DFS warrants expanded monitoring, additional research, additional habitat protection, or resumption of Federal protection under the Act.

The final PDM plan and any future revisions will be posted on our Endangered Species Program's national Web page at: *http://endangered.fws.gov* and on the Chesapeake Bay Field Office Web page at: *http://www.fws.gov/chesapeakebay*.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the names of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered

Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. As no Federally recognized Tribes occur within the squirrel's Delmarva Peninsula range, we have determined that no Tribes will be affected by this rule.

References Cited

A complete list of all references cited in this final rule is available at: *http://www.regulations.gov* at Docket No. FWS–R5–ES–2014–0021, or upon request from the Chesapeake Bay Field Office (see **ADDRESSES**).

Authors

The primary authors of this proposed rule are staff members of the Service's Chesapeake Bay Field Office (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we hereby propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 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.

§ 17.11—[Amended]

■ 2. Amend section 17.11(h) by removing both entries for ''Squirrel, Delmarva Peninsula fox'' under ''Mammals'' from the List of Endangered and Threatened Wildlife.

§ 17.84—[Amended]

■ 3. Amend § 17.84 by removing and reserving paragraph (a).

Dated: September 5, 2014.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2014–22063 Filed 9–22–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket Nos. FWS–R3–ES–2013–0043; FWS–R3–ES–2013–0017: 4500030114]

RIN 1018–AY01; 1018–AZ58

Endangered and Threatened Wildlife and Plants; Listing and Designation of Critical Habitat for the Dakota Skipper and the Poweshiek Skipperling

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the October 24, 2013, proposal to designate critical habitat for the Dakota skipper (*Hesperia dacotae*) and Poweshiek skipperling (*Oarisma poweshiek*) and proposed 4(d) rule for the Dakota skipper under the Endangered Species Act of 1973, as amended (Act). We are also revising our proposed critical habitat rule to add two proposed critical habitat units for the Poweshiek skipperling in Minnesota, remove two proposed units (one for the Dakota skipper in Minnesota and one for the Poweshiek skipperling in North Dakota), and revise the boundaries of seven Poweshiek skipperling units and five Dakota skipper units in Minnesota. These changes are proposed based on new or updated biological and ecological information for those areas. We also announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat for the Dakota skipper and Poweshiek skipperling 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 4(d) rule, the proposed critical habitat rule (including the changes described in this document), the associated DEA, 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: For the proposed 4(d) rule found at Docket No. FWS–R3–ES–2013–0043, we will consider comments received or postmarked on or before October 7, 2014. For the critical habitat proposal and the draft economic analysis found at Docket No. FWS–R3–ES–2013–0017, we will consider comments received or postmarked on or before October 23, 2014. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing dates shown above.

ADDRESSES:

Document availability: You may obtain copies of the proposed rules, the associated documents, and the draft economic analysis on the Internet at *http://www.regulations.gov* at Docket No. FWS–R3–ES–2013–0043 (proposed 4(d) rule) or Docket No. FWS–R3–ES–2013–0017 (proposed critical habitat and draft economic analysis) or by mail from the Twin Cities Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Written Comments: You may submit written comments by one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.* In the Search box, enter the Docket Number FWS–R3–ES–2013–0043 (proposed 4(d) rule) or FWS–R3–ES–2013–0017 (proposed critical habitat), which are the docket numbers for these rulemakings. You may submit a comment by clicking on ''Comment Now!'' Please ensure that you have found the correct rulemaking before submitting your comment.

(2) *U.S. Mail or Hand Delivery:*

• Submit comments on the proposed 4(d) rule for the Dakota skipper by U.S. mail or hand delivery to: Public Comments Processing, Attn: Docket No. FWS–R3–ES–2013–0043; U.S. Fish & Wildlife Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

• Submit comments on the critical habitat proposal and the draft economic analysis for the Dakota skipper and the Poweshiek skipperling by U.S. mail or hand delivery to: Public Comments Processing, Attn: Docket No. FWS–R3–ES–2013–0017; U.S. Fish & Wildlife Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

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).

FOR FURTHER INFORMATION CONTACT:

Peter Fasbender, Field Supervisor, U.S. Fish and Wildlife Service, Twin Cities Ecological Services Field Office, 4101 American Boulevard East, Bloomington, MN 55425; telephone 612–725–3548; or facsimile 612–725–3609. Persons who use a telecommunications device for the deaf (TDD) may call the Federal

Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed 4(d) rule for the Dakota skipper and the proposed designation of critical habitat for those species that were published in the **Federal Register** on October 24, 2013 (78 FR 63574 and 78 FR 63625, respectively), our DEA of the proposed critical habitat designation, and the amended required determinations for the proposed critical habitat designation provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) The amount and distribution of Dakota skipper and Poweshiek skipperling habitat;

(b) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of the species, should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including how to implement livestock grazing, haying, or prescribed fire in a manner that is conducive to the conservation of Dakota skipper or Poweshiek skipperling, and managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on the Dakota skipper and Poweshiek skipperling and proposed critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, we seek information on any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(6) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act. Specifically, we seek information regarding the benefits of excluding or including properties that are under conservation easement to the U.S. Fish and Wildlife Service or another conservation agency, or properties held by conservation organizations. Additionally, we are seeking information to better understand how the potential exclusion or inclusion of specific private lands in the final critical habitat designation would affect private landowner interest and acceptance of programs that are intended to conserve native grasslands in the range of Dakota skipper and Poweshiek skipperling. We seek any information relevant to potential exclusion of any proposed critical habitat unit, and particularly seek information relating to conservation programs or plans of any kind that may protect butterfly habitat on these units.

(7) Whether any specific Tribally-owned areas we are proposing for critical habitat designation should be considered for exclusion from final designation under section 4(b)(2) of the Act, and information regarding the management of those areas.

(8) Information on the extent to which the description of economic impacts in the DEA is a reasonable estimate of the likely economic impacts.

(9) Information on actions on Tribal lands that would involve the Bureau of Indian Affairs, such as actions on lands held in trust for the benefit of a Tribe or enrolled member.

(10) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

(11) Whether the proposed 4(d) rule for the Dakota skipper should include all counties where the Dakota skipper occurs, regardless of habitat type, with regard to exempting take caused by grazing. This would exempt incidental take of Dakota skippers as a result of activities associated with routine livestock operations in all counties where the species occurs. This change to the proposed rule would mean that take of Dakota skippers caused by livestock grazing activities would also be exempt on lands in Kittson County, Minnesota, and Eddy, McHenry, Richland, Rolette, Sargent, and Stutsman Counties, North Dakota, whereas the proposed special rule published October 24, 2013 (78 FR 63574), does not provide exemptions in those counties.

If you submitted comments or information on the proposed rules (78 FR 63574 and 78 FR 63625) during the initial comment period from October 24, 2013, to December 23, 2013, 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 determination. Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determinations, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rules or DEA by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit 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 supporting documentation we used in preparing the proposed rules and DEA, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R3–ES–2013–0043 (proposed 4(d) rule) or FWS–R3–ES–2013–0017 (proposed critical habitat), or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Twin Cities Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

For more information on the Dakota skipper and Poweshiek skipperling or their habitat or on previous Federal actions concerning these species, refer to the proposed listing rule or the proposed critical habitat rule, both of which were published in the **Federal Register** on October 24, 2013 (78 FR 63574 (proposed listings) and 78 FR 63625 (proposed critical habitat)). Those proposed rules are available online at *http://www.regulations.gov* (at Docket Number FWS–R3–ES–2013–0043 (for the proposed listings) or FWS–R3–ES–2013–0017 (for the proposed critical habitat)) or from the Twin Cities Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On October 24, 2013, we published a proposed rule to list the Dakota skipper as a threatened species and the Poweshiek skipperling as an endangered species (78 FR 63574). On the same date, we also published a proposed rule to designate critical habitat for the Dakota skipper and Poweshiek skipperling (78 FR 63625). We proposed to designate approximately 11,243 hectares (ha) (27,782 acres (ac)) as critical habitat for the Dakota skipper in Minnesota, North Dakota, and South Dakota. We proposed approximately 10,596 ha (26,184 ac) for designation as critical habitat for the Poweshiek skipperling, in Iowa, Michigan, Minnesota, North Dakota, South Dakota, and Wisconsin. Approximately 6,042 of the hectares (14,931 ac) proposed as critical habitat for the two species overlapped; thus, the total area proposed as critical habitat was approximately 15,797 ha (39,035 ac). Those proposals had a 60-day comment period, ending December 23, 2013; however, we continued to accept comments between then and the reopening of the comment period announced in this document.

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Revisions to Proposed Critical Habitat

We propose to revise the proposed critical habitat rule that was published on October 24, 2013 (78 FR 63625) by: (1) Removing DS Minnesota Unit 15 and PS North Dakota Unit 3; (2) adding two new units for Poweshiek skipperling in Minnesota; and (3) revising the boundaries of seven Poweshiek skipperling units and five Dakota skipper units, all in Minnesota. We are proposing these changes based on new or updated biological and ecological information for those areas.

Units Removed from Proposed Critical Habitat

We are removing DS Minnesota Unit 15 and PS North Dakota Unit 3 from the proposed critical habitat designation. We received new or updated information that indicates that these areas do not meet our criteria for critical habitat as described in the proposed critical habitat rule because the habitat is no longer suitable for the species. DS Minnesota Unit 15 was 108 ha (268 ac) in Polk County owned primarily by The Nature Conservancy (102 ha (252 ac)) and included the Pankratz Memorial Prairie. The remaining 6 ha (15 ac) was private land. PS North Dakota Unit 3 was 47 ha (117 ac) of federally owned land and included Krause Wildlife Production Area in Sargent County.

Newly Proposed Critical Habitat Units

We propose two new critical habitat units for the Poweshiek skipperling in Minnesota. Newly proposed PS Minnesota Unit 19 corresponds to proposed DS Minnesota Unit 13, and totals 106 ha (262 ac) of State-owned land in Kittson County, Minnesota. PS Minnesota Unit 19 is now being proposed as critical habitat based on information received from the Minnesota Department of Natural Resources (MN DNR) and a peer reviewer that this area retains good quality habitat for the Poweshiek skipperling. PS Minnesota Unit 20 is 1,117 ha (2,760 ac) of State and federally owned land in Polk County, Minnesota. This unit is proposed as critical habitat for the Poweshiek skipperling because, since the October 24, 2013, proposed rule was published, we received multi-year survey results from an amateur butterfly surveyor verifying the species presence in this unit. The validity of the surveys was verified by a MN DNR butterfly expert. These units are described in detail below.

PS Minnesota Unit 19 (Corresponds to DS Minnesota Unit 13)

Minnesota Unit 19 is comprised of two subunits totaling 106 ha (262 ac) in Kittson County owned by the State of Minnesota and is part of the Lake Bronson State Park managed by the Minnesota Department of Natural Resources Division of Parks and Recreation. Located in T161N, R46W, Sections 26, 27, 33, 34, and 35 and T160N, R46W, Sections 4 and 5, this unit occurs north of County Road 10, Minnesota approximately 2.9 km (1.8 mi) east of the intersection of County Road 10 and Highway 59. The two subunits are approximately 0.6 km (0.4 mi) apart, separated primarily by forested land or shrub-land. This unit is considered unoccupied, but recent surveys indicate that the habitat is still suitable for the species (Service 2014, unpubl. geodatabase). This unit is essential to the conservation of the species because it provides habitat essential to accommodate populations of the species to meet the conservation principles of redundancy and resiliency throughout the species' range. Additionally, this unit contains the physical or biological features essential to the conservation of the Poweshiek skipperling. The unit consists of larval and adult habitat, and contains a high-quality native remnant prairie containing a high diversity of native prairie grasses and flowering forbs. This unit may also contain small patches of lesser quality or unrated native prairie or dispersal grassland habitat that is within 1 km (0.6 mi) of native high-quality prairie that connects patches of higher quality native prairies. The dry prairie habitats in this unit are rated by the Minnesota Natural Heritage Program County Biological Survey as good quality prairie (Service 2014, unpubl. geodatabase).

Subunit A: This 16-ha (38-ac) subunit occurs north of County Road 10 in Minnesota, approximately 2.9 km (1.8 mi) east of the intersection of County Road 10 and Highway 59, and is located in T161N, R46W, Section 33 and T160N, R46W, Sections 4 and 5. The Poweshiek skipperling was last observed in 1991 in this subunit.

Subunit B: This 91-ha (224-ac) subunit occurs north of County Road 10 in Minnesota, approximately 4.2 km (2.6 mi) east of the intersection of County Road 10 and Highway 59, and is located in T161N, R46W, Sections 26, 27, 34,

and 35. The Poweshiek skipperling was last observed in 1991 in this subunit.

PS Minnesota Unit 20

Minnesota Unit 20 consists of 1,117 ha (2,760 ac) in Polk County, Minnesota. Approximately 984 ha (2,432 ac) is owned and managed primarily by the Minnesota Department of Natural Resources and includes the Chicog Wildlife Management Area. The remaining 132 ha (328 ac) is owned by the U.S. Fish and Wildlife Service and is part of the Melvin Slough Wildlife Management Area. Located in T148N, R45W, Sections 20, 21, 28, 29, 32, and 33, this unit occurs south of State Highway 102 south of Melvin, Minnesota. This unit is considered to be occupied and has had recent adult observations over multiple years (2004–2007, and 2013) (Weber 2013, in litt.). This unit contains the physical or biological features essential to the conservation of the Poweshiek skipperling. This unit consists of larval and adult habitat, and contains a high-quality native mesic prairie with a high diversity of native prairie grasses and flowering forbs, including little bluestem (*Schizachyrium scoparium*), black-eyed Susan (*Rudbeckia hirta*), and prairie clover (*Dalea* sp.).

Threats to the physical or biological features within Minnesota Unit 20 include, but are not limited to ecological succession and encroachment of invasive species and woody vegetation, and small size and isolation from other units. Special management considerations or protection that may be needed to address these threats include, but are not limited to, the control of invasive plant species and restoration of native tallgrass prairie plant community structure that result in native grasses and flowering forbs available and necessary for Poweshiek skipperling's life-history needs.

Units With Proposed Revised Boundaries

We propose to revise the boundaries of the following proposed critical habitat units: DS Minnesota Unit 4, PS Minnesota Unit 4, DS Minnesota Unit 5, PS Minnesota Unit 5, DS Minnesota Unit 7, PS Minnesota Unit 7, DS Minnesota Unit 8, PS Minnesota Unit 8, DS Minnesota Unit 10, PS Minnesota Unit 10, PS Minnesota Unit 11, and PS Minnesota Unit 13. Since the October 24, 2013, proposal was published, we have received better information about the habitat quality in these units, allowing us to refine the boundaries to include suitable habitat and exclude habitat that is of poor quality for these species. The areas we are proposing to add all contain the physical or biological features essential to the conservation of the Dakota skipper or the Poweshiek skipperling; the areas we are proposing to remove all lack the physical or biological features essential to the conservation of the species. In total, the additions to proposed critical habitat units described below amount to approximately 813 ha (2,009 ac), and the removals from proposed critical habitat units described below amount to approximately 349 ha (862 ac). This means a net increase of approximately 464 ha (1,147 ac) to the total proposed critical habitat designation for both species. The proposed changes to these units are described below, and detailed unit descriptions are available online at *http://www.regulations.gov* in Docket No. FWS–R3–ES–2013–0017.

DS Minnesota Unit 4 (corresponds to PS Minnesota Unit 4): We propose to add approximately 161 ha (397 ac) of The Nature Conservancy (TNC) land and 32 ha (79 ac) of State-owned land to DS Minnesota Unit 4.

PS Minnesota Unit 4 (corresponds to DS Minnesota Unit 4): We propose to add approximately 161 ha (397 ac) of The Nature Conservancy (TNC) land and 32 ha (79 ac) of State-owned land to PS Minnesota Unit 4.

DS Minnesota Unit 5 (corresponds to a portion of PS Minnesota Unit 5): We propose to remove approximately 302 ha (746 ac) of private land, 15 ha (37 ac) of State land, 9 ha (22 ac) of TNC land, and 10 ha (24 ac) county land from DS Minnesota Unit 5. The net decrease in area is approximately 336 ha (830 ac).

PS Minnesota Unit 5 (a portion corresponds to DS Minnesota Unit 5): We propose to remove approximately 302 ha (746 ac) of private land, 9 ha (22 ac) of TNC land, and 10 ha (24 ac) county land from PS Minnesota Unit 5. We also propose the addition of 129 ha (319 ac) of State land to PS Minnesota Unit 5. The net decrease in area is approximately 192 ha (474 ac).

DS Minnesota Unit 7 (subunit A corresponds to PS Minnesota Unit 7): We propose to add approximately 9 ha (23 ac) of State land to DS Minnesota Unit 7, subunit A.

PS Minnesota Unit 7 (corresponds to DS Minnesota Unit 7, subunit A): We propose to add approximately 9 ha (23 ac) of State land to PS Minnesota Unit 7.

DS Minnesota Unit 8 (corresponds to PS Minnesota Unit 8): We propose to remove approximately 13 ha (31 ac) of privately owned land from DS Minnesota Unit 8.

PS Minnesota Unit 8 (corresponds to DS Minnesota Unit 8): We propose to remove approximately 13 ha (31 ac) of privately owned land from PS Minnesota Unit 8.

DS Minnesota Unit 10 (corresponds to PS Minnesota Unit 10): We propose to add approximately 25 ha (64 ac) of State land and 338 ha (835 ac) of TNC land to DS Minnesota Unit 10.

PS Minnesota Unit 10 (corresponds to DS Minnesota Unit 10): We propose to add approximately 25 ha (64 ac) of State land and 338 ha (835 ac) of TNC land to PS Minnesota Unit 10.

PS Minnesota Unit 11: We propose to add approximately 16 ha (40 ac) of TNC land to PS Minnesota Unit 11.

PS Minnesota Unit 13: We propose to add approximately 69 ha (170 ac) of TNC land and 34 ha (84 ac) of privately owned land to PS Minnesota Unit 13.

Additional Critical Habitat Map

The map for three proposed critical habitat units for the Dakota skipper in Brookings County, South Dakota (SD units 20, 21, and 22) was inadvertently omitted from the proposed rule published on October 24, 2013 (78 FR 63625). That map was subsequently made available on *http://www.regulations.gov* and the Service's Web site at *http://www.fws.gov/midwest/Endangered/insects/dask/dask_poskPropListCH24Oct2013.html.* The proposed critical habitat units were included in the October 2013 proposal and detailed descriptions of each were provided at that time. The map of Dakota skipper proposed critical habitat units SD 20, 21, and 22 is published in the Proposed Regulation Promulgation section of this document.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider among other factors, the additional regulatory benefits that an area would receive through the analysis under section 7 of the Act addressing the destruction or adverse modification of critical habitat as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational

benefits of identifying areas containing essential features that aid in the recovery of the listed species, and any ancillary benefits triggered by existing local, State, or Federal laws as a result of the critical habitat designation. When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to incentivize or result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan.

In the case of the Dakota skipper and Poweshiek skipperling, the benefits of critical habitat include public awareness of the presence of species and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for the Dakota skipper and Poweshiek skipperling due to protection from adverse modification or destruction of critical habitat (particularly in unoccupied critical habitat). In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies (for example, in working with private and Tribal landowners). Most Federal conservation agencies work with private and Tribal landowners on a voluntary basis, and, therefore, actions that make otherwise willing landowners less likely to engage in Federal conservation programs can affect butterfly conservation. During the initial comment period, we heard from some landowners who indicated that critical habitat designation would make them less likely to participate in conservation programs offered by the Service or other conservation agencies and less likely to allow monitoring or recovery actions for these species on their lands.

The final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment periods and information about the probable economic impact of designation. Accordingly, we have prepared a draft economic analysis (DEA) concerning the proposed critical habitat designation; the DEA is available for review and comment (see **ADDRESSES**).

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for these particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

For these particular designations, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from these proposed designations of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable economic effects of the designation of critical habitat for the Dakota skipper and Poweshiek skipperling (Industrial Economics, Inc. 2014). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out the geographic areas in which the critical habitat designation is unlikely to result in probable incremental economic impacts. In particular, the screening analysis considers baseline costs (absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. The screening analysis filters out particular areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The screening analysis also assesses whether units are unoccupied by the species and may require additional management or conservation efforts as a result of the critical habitat designation and may incur incremental economic impacts. This screening analysis, combined with the information contained in our IEM, is what we consider our draft economic analysis of the proposed critical habitat designations for the Dakota skipper and Poweshiek skipperling and is summarized in the narrative below.

Executive Orders (E.O.) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable. We assess to the extent practicable, the probable impacts, if sufficient data are available, to both directly and indirectly impacted entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the Dakota skipper and Poweshiek skipperling, first we identified, in the IEM dated March 25, 2014, probable incremental economic impacts associated with the following categories of activities: (1) Grazing and agricultural activity on private lands managed under agreements with the

Service or the Natural Resources Conservation Service (NRCS); (2) land management activities on public lands and privately managed conservation lands; (3) oil and gas development; (4) transportation activities; and (5) other development on private lands (e.g., residential and commercial development, gravel mining, wind energy).

We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the Dakota skipper or Poweshiek skipperling is present, Federal agencies would be required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize these proposed critical habitat designations, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the consultation process. Therefore, disproportionate impacts to any geographic area or sector are not likely as a result of these critical habitat designations.

In our IEM, we attempted to clarify the distinction between the effects that will result from the species being listed and those attributable to the critical habitat designation (i.e., difference between the jeopardy and adverse modification standards) for the Dakota skipper and Poweshiek skipperling. Because the designations of critical habitat for the Dakota skipper and Poweshiek skipperling were proposed concurrently with the listings, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species; and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to the Dakota skipper or Poweshiek skipperling would also likely adversely affect the essential physical or biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for these species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of these proposed designations of critical habitat.

Incorporating our proposed changes to units as described above, the proposed critical habitat designation for the Dakota skipper includes 50 units comprising approximately 11,353 ha (28,054 ac) in Chippewa, Clay, Kittson, Lincoln, Murray, Norman, Pipestone, Polk, Pope, and Swift Counties in Minnesota; McHenry, McKenzie, Ransom, Richland, Rolette, and Wells Counties in North Dakota; and, Brookings, Day, Deuel, Grant, Marshall, and Roberts Counties in South Dakota. Approximately 50 percent of the proposed critical habitat for the Dakota skipper is currently occupied. There are several units where we are uncertain of the current occupancy; these units are considered as unoccupied habitat for purposes of critical habitat designation.

Incorporating our proposed changes to units as described above, the proposed critical habitat designation for the Poweshiek skipperling includes 62 units as critical habitat for Poweshiek skipperling comprising approximately 12,253 ha (30,279 ac) in Cerro Gordo, Dickinson, Emmet, Howard, Kossuth, and Osceola Counties in Iowa; in Hillsdale, Jackson, Lenawee, Livingston, Oakland, and Washtenaw Counties in Michigan; in Chippewa, Clay, Cottonwood, Douglas, Kittson, La Qui Parle, Lincoln, Lyon, Mahnomen, Murray, Norman, Pipestone, Polk, Pope, Swift, and Wilkin Counties in Minnesota; in Richland County in North Dakota; in Brookings, Day, Deuel, Grant, Marshall, Moody, and Roberts Counties in South Dakota; and in Green Lake and Waukesha Counties in Wisconsin. Approximately 15 percent of the proposed critical habitat for the Poweshiek skipperling is currently occupied. There are several units where we are uncertain of the current occupancy; these units are considered as unoccupied habitat for purposes of critical habitat designation.

Incorporating our proposed changes to units as described above, approximately 6,367 of the hectares (15,732 ac) proposed as critical habitat for the two species overlap; thus, the total acreage proposed as critical habitat is 17,240 ha (42,600 acres). The proposed critical habitat includes lands under the following ownership: Federal (13 percent), State/county (40 percent), Tribal (5 percent), and private (including private conservation lands) (42 percent). A mixture of conservation, recreational, and agricultural land uses occur within the areas proposed as critical habitat for both species; these include lands owned and managed for conservation and recreation by private conservation organizations and State recreation and conservation agencies, respectively; livestock grazing and haying; and other activities, including the application of prescribed fire.

The screening analysis reviews potential section 7 and other costs resulting from the proposed critical habitat designation for the two butterflies. The section 7 costs of the proposed rule are likely to differ depending on the type of habitat in which a project occurs, as follows:

- Occupied Habitat: In occupied areas, activities with a Federal nexus would be subject to section 7 consultation requirements regardless of critical habitat designation, due to the presence of the listed species. In addition, the Service anticipates that in most cases project modifications recommended to avoid adverse modification or minimize effects to critical habitat would largely be the same as those needed to avoid jeopardy or minimize take. In rare instances, the Service believes that it may be able to differentiate between conservation measures implemented to minimize impacts to avoid jeopardy and measures implemented to minimize impacts to avoid adverse modification. However, the Service cannot predict when or where these instances may occur. Thus, we do not forecast any incremental impacts resulting from project modifications in occupied areas. When section 7 consultations occur, incremental costs are likely to be limited to the additional administrative effort to consider adverse modification during the consultation process.
- Unoccupied Habitat: In unoccupied areas, activities with a Federal nexus may not be subject to section 7 consultation requirements absent the designation of critical habitat because the species is not present. Therefore, incremental costs in these areas would include both the entire administrative costs of consultation as well as the costs of developing and implementing conservation measures needed to avoid adverse modification of critical habitat.
- Uncertain Habitat: Uncertain areas were treated as occupied for purposes of the screening analysis. Given that surveys for the species have previously been undertaken in these areas, and the species was present in these units the past, landowners are likely to be aware that the species may be present. Further, where there is a nexus for activities occurring on uncertain critical habitat, Federal agencies overseeing the activity

would likely already have been aware of the need to consult with the Service. Because of the short duration (less than 3 weeks) of their adult flight period, it may be difficult to detect the two butterflies during surveys. In part for that reason, the Service expects in most situations to treat these areas as occupied for purposes of section 7 consultation. For purposes of section 7 consultation, we may consider the species to be present in those areas with uncertain occupancy. In those areas where we are uncertain of the presence of the species, the Service may consult on activities regardless of the critical habitat designation because there is still a sufficient likelihood of the species' presence. Therefore, when section 7 consultations occur, incremental costs within uncertain units are, in most situations, likely to be limited to the additional administrative effort to consider adverse modification during the consultation process.

Because we anticipate that incremental administrative costs in occupied and uncertain habitat areas will be minor (in most situations), our analysis is focused on areas where incremental project modifications could occur.

To determine section 7 costs, the analysis focuses on the impacts of future consultations likely to occur for activities undertaken by or permitted by Federal agencies within unoccupied areas of proposed critical habitat. In areas the Service is certain are unoccupied (8 percent of the proposed designation), incremental section 7 costs may include both the administrative costs of consultation and the costs of developing and implementing conservation measures. Specifically, the analysis forecasts costs associated with conservation efforts that may be recommended in consultation for activities covered by voluntary conservation agreements with the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS). The total quantifiable incremental section 7 costs associated with these NRCS agreements are estimated to be $440,000 in 2014. While future wind projects in unoccupied critical habitat may incur incremental project modification costs, the likelihood and timing of such projects are highly uncertain.

In addition, the screening analysis considered the magnitude of potential administrative costs that could result from the consideration of adverse modification in consultations occurring within habitat considered occupied for purposes of section 7. The majority of acres proposed for designation (92 percent) are considered to be occupied, or occupancy is uncertain but the butterflies have been identified at the site in the past. The rough assessment of incremental administrative costs for occupied areas indicates that aggregate incremental costs would be significantly less than $100 million in any given year.

In terms of other costs, the analysis concludes that the designation of critical habitat is unlikely to trigger additional requirements under State or local regulations. Finally, costs resulting from public perception of the effect of critical habitat, based on the value of privately owned, non-conservation land in the vicinity of the proposed designations, combined with the other incremental impacts estimated in this analysis, are unlikely to reach $100 million in any given year.

Various economic benefits may result from incremental conservation efforts, including: (1) Those associated with the primary goal of species conservation (direct benefits), and (2) those additional beneficial services that derive from conservation efforts but are not the purpose of the Act (ancillary benefits). Due to existing data limitations, the analysis is unable to assess the likely magnitude of these benefits.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed critical habitat rules and our amended required determinations. We may revise the proposed critical habitat rules or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of either of these species.

Required Determinations—Amended

In our October 24, 2013, proposed rule (78 FR 63625), we indicated that we would defer our determination of compliance with several statutes and executive orders until we had evaluated the probable effects on landowners and stakeholders and the resulting probable economic impacts of the designation. Following our evaluation of the probable incremental economic impacts resulting from the designations of critical habitat for the Dakota skipper and Poweshiek skipperling, we have amended or affirmed our determinations below. Specifically, we affirm the information in our proposed rule concerning Executive Orders (E.O.s) 12866 and 13563 (Regulatory Planning and Review), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). However, based on our evaluation of the probable incremental economic impacts of the proposed designations of critical habitat for the Dakota skipper and Poweshiek skipperling, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), E.O. 13211 (Energy Supply, Distribution, or Use), and E.O. 12630 (Takings).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an 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 effects 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 the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

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 manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these

small entities are significant, we considered the types of activities that might trigger regulatory impacts under these designations 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.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and, therefore, are not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the agency is not likely to adversely modify critical habitat. Therefore, under these circumstances only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is our position that only Federal action agencies will be directly regulated by these designations. Federal agencies are not small entities, and to this end, there is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that, if promulgated, the proposed critical habitat designations will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designations would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designations will not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use (Executive Order 13211)

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because wind energy development is actively occurring in the States with proposed critical habitat, we investigated whether there are any planned projects in the proposed critical habitat in the draft economic analysis. Two wind projects are currently planned or ongoing within or near two occupied proposed critical habitat units in South Dakota: DS South Dakota Unit 17 and DS South Dakota Unit 19. While these projects trigger section 7 consultation, incremental impacts are likely to be limited to administrative effort, because the potentially affected critical habitat units are occupied. We are not aware of any planned or ongoing projects within proposed unoccupied critical habitat, however, existing wind farms are located near several unoccupied units in Iowa, including PS IA Units 2, 3, 4, 6, 7, and 9. Much of the unoccupied habitat in Iowa is owned and managed by entities that are unlikely to pursue wind energy development. Should a project be proposed on or near the unoccupied proposed critical habitat where such development is possible, incremental impacts could occur, however, the timing and magnitude of such impacts are highly uncertain. Although we are unable to predict the likelihood that wind power projects will be proposed in unoccupied critical habitat, the small number of acres potentially affected, combined with relatively modest potential project modification costs, we do not expect the designation of this proposed critical habitat to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

E.O. 12630 (Takings)

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Dakota skipper and Poweshiek skipperling in a takings implications assessment. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. The economic analysis found that no significant economic impacts are likely to result from the designation of critical habitat for the Dakota skipper and Poweshiek skipperling. Because the Act's critical habitat protection requirements apply only to Federal agency actions, few conflicts between critical habitat and private property rights should result from these designations. Based on information contained in the economic analysis assessment and described within this document, it is not likely that economic impacts to a property owner would be of a sufficient magnitude to support a takings action. Therefore, the takings implications assessment concludes that these critical habitat designations for the Dakota skipper and Poweshiek skipperling do not pose significant takings implications for lands within or affected by the designation.

Authors

The primary authors of this document are the staff members of the Twin Cities Ecological Services Field Office, Region 3, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

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 on October 24, 2013 (78 FR 63625) as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.95(i) as follows:

■ a. By revising paragraphs (5), (9), (10), (12), (13), (15), (18), and (41) under the entry ''Dakota Skipper (*Hesperia dacotae*)'' as proposed to be amended on October 24, 2013 (78 FR 63655); and

■ b. Under the entry ''Poweshiek Skipperling (*Oarisma poweshiek*)'' revise paragraphs (7), (8), (28), (29), (31), (32), (33), (34), and (36); redesignate paragraphs (41) through (55) as paragraphs (43) through (57); add new paragraphs (41) and (42); and remove and reserve newly redesignated paragraph (44) as proposed to be amended on October 24, 2013 (78 FR 63693).

The revisions and additions read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) *Insects.*

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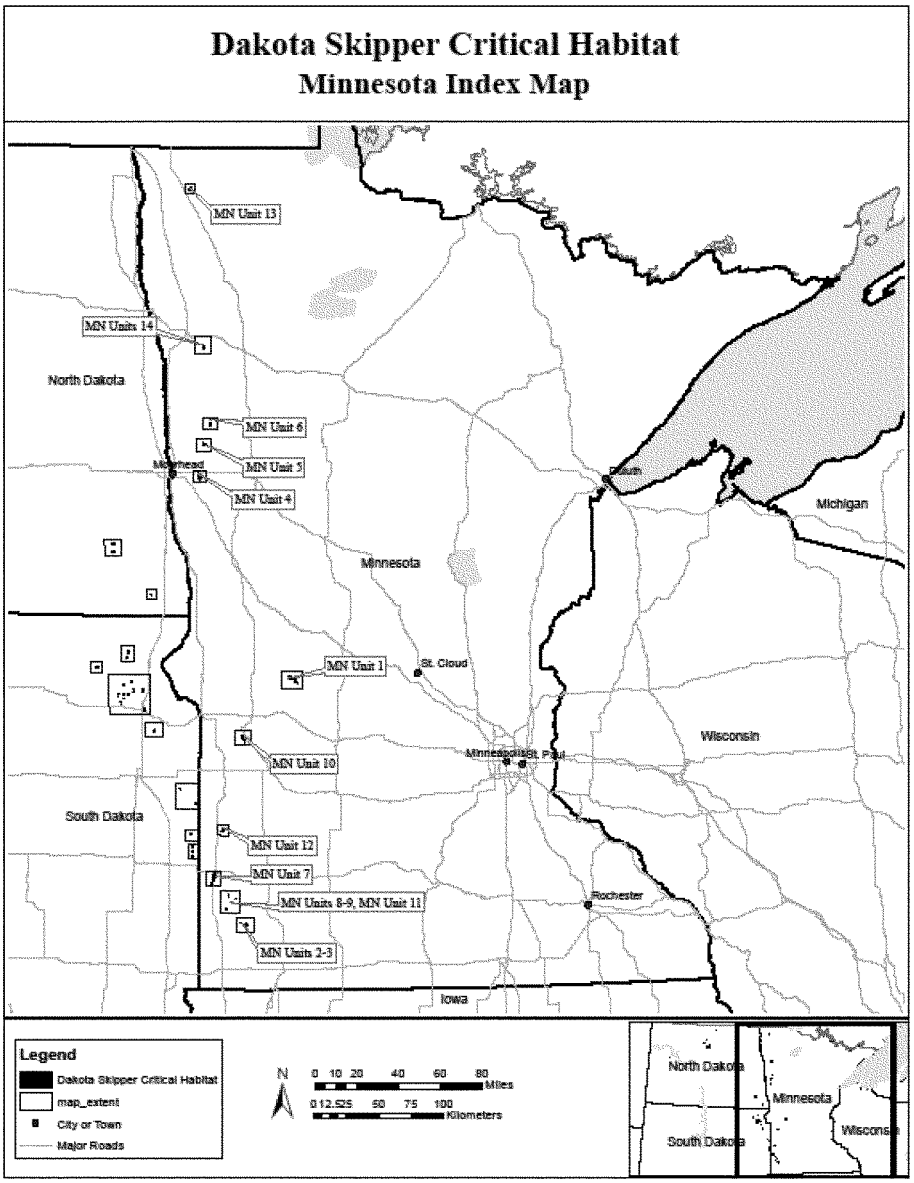
Dakota Skipper *(Hesperia dacotae)*

* * * * *

(5) Minnesota index map follows:

BILLING CODE 4310–55–P



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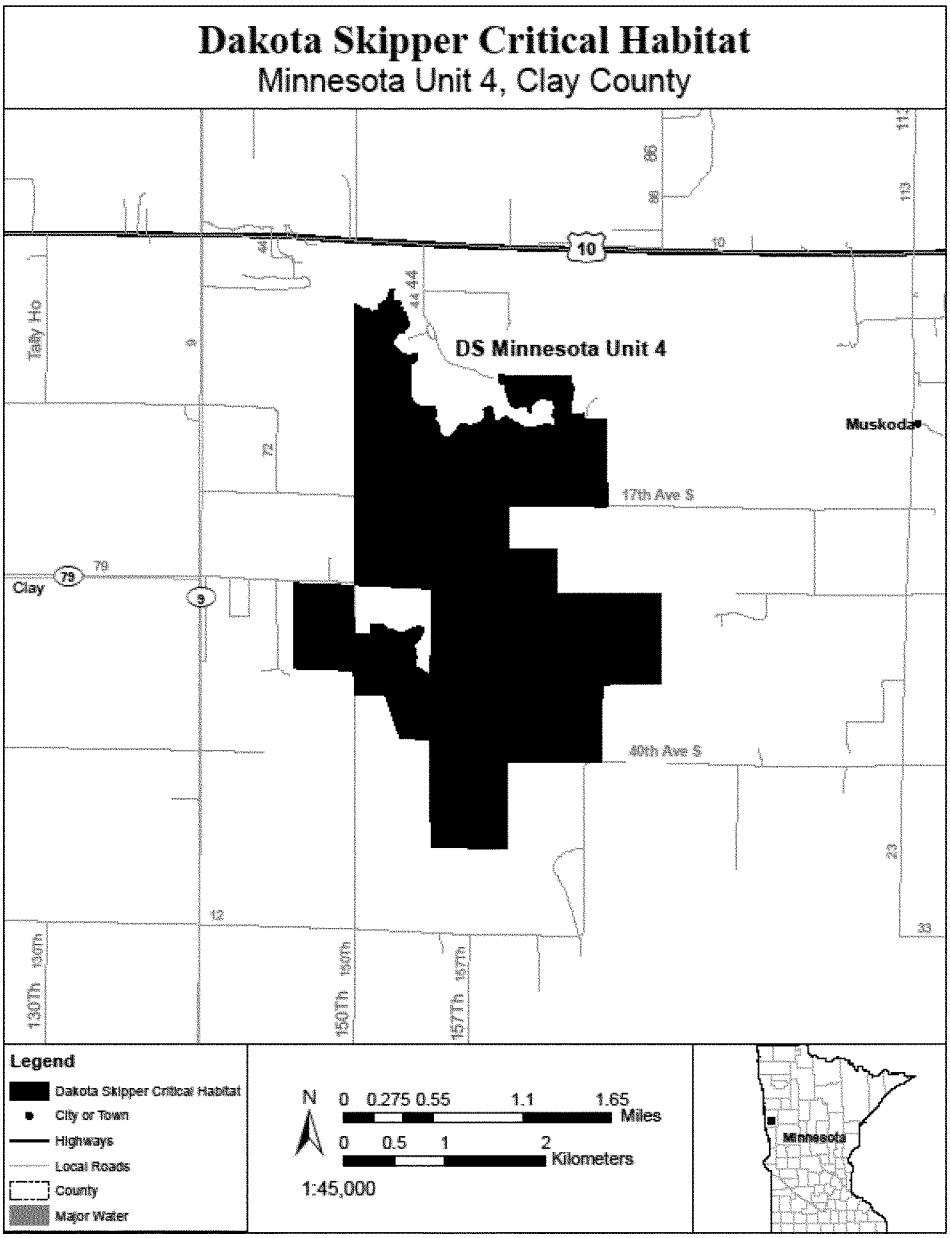
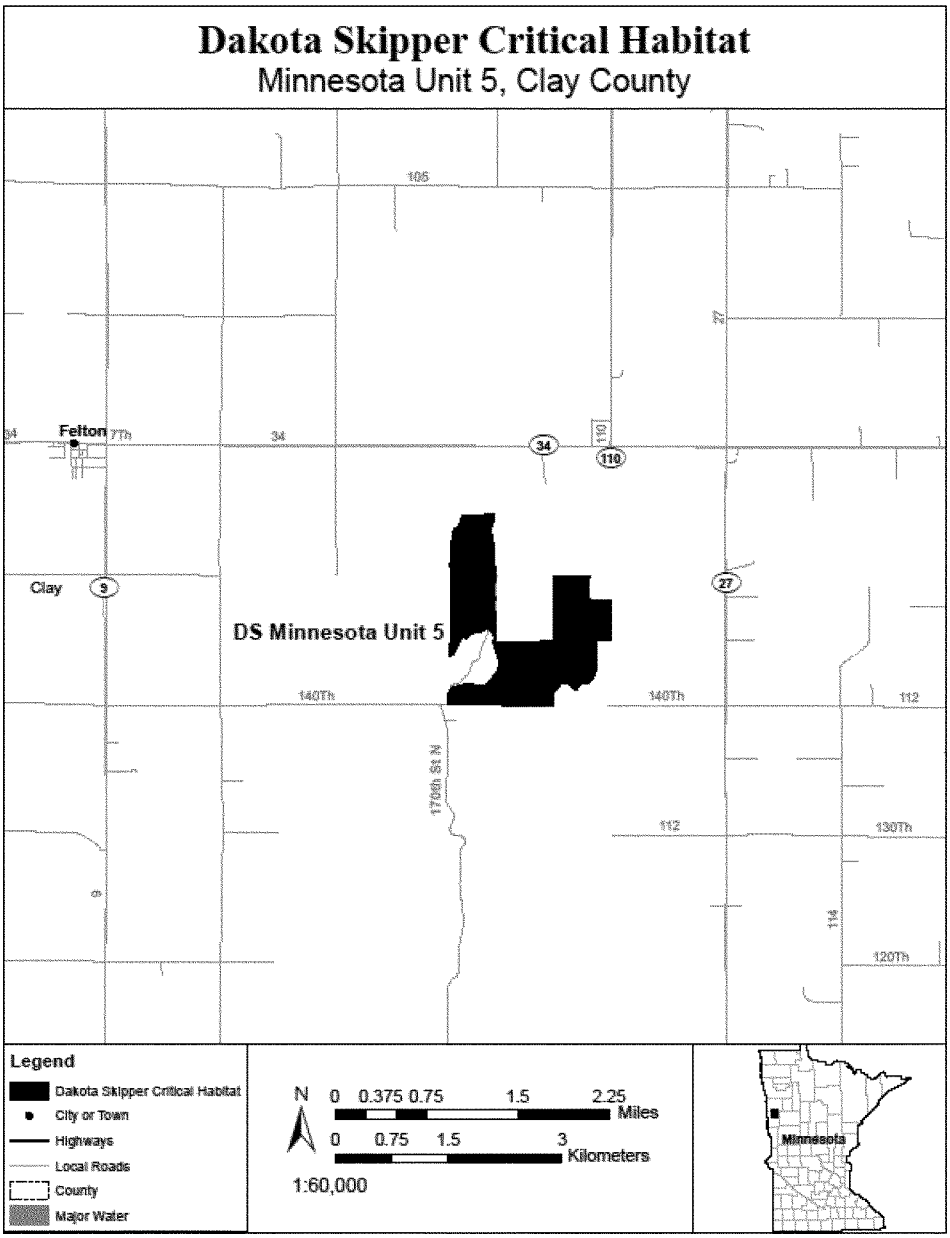
(9) DS Minnesota Unit 4, Clay County, Minnesota. Map of DS Minnesota Unit 4 follows:



(10) DS Minnesota Unit 5, Clay County, Minnesota. Map of DS Minnesota Unit 5 follows:



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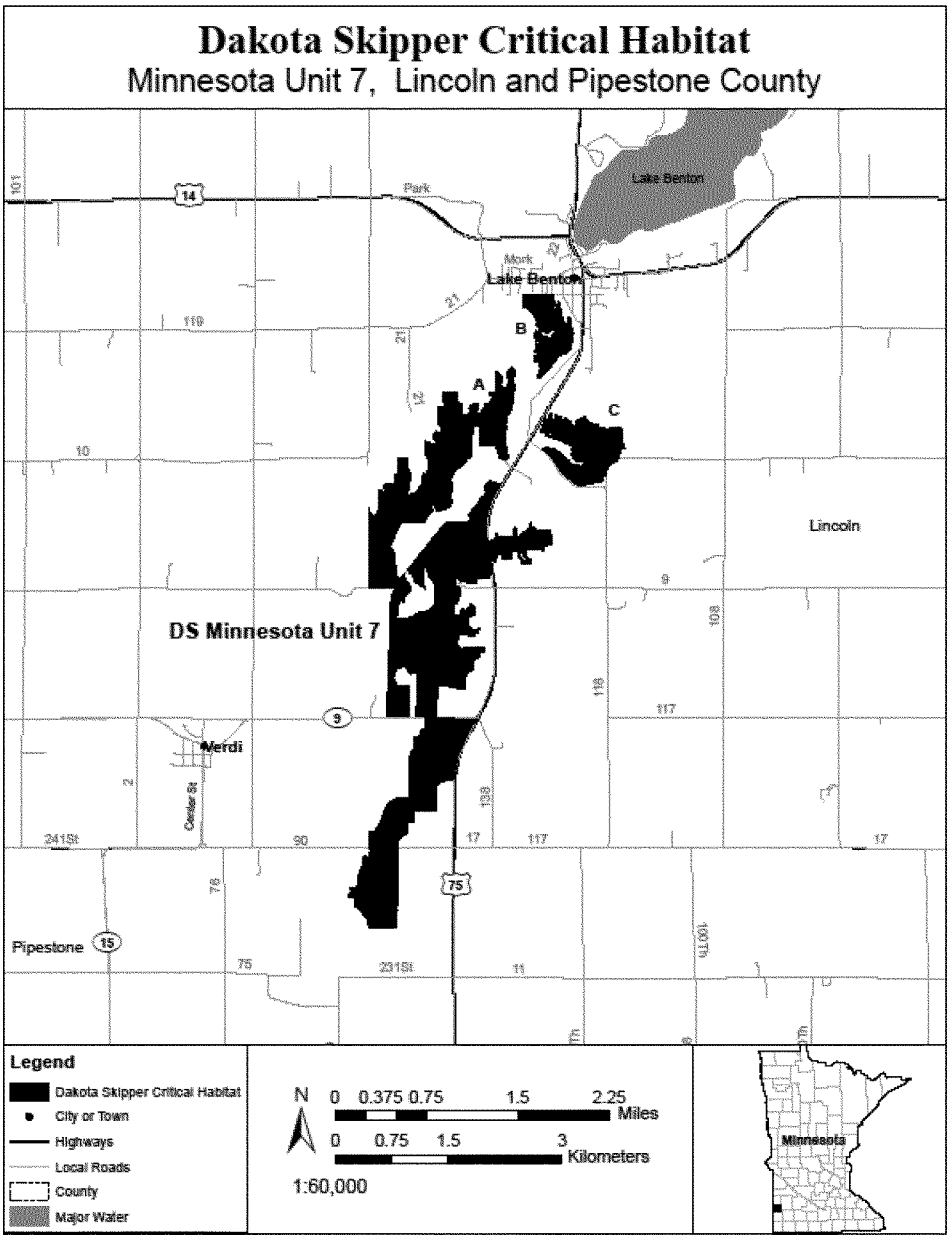
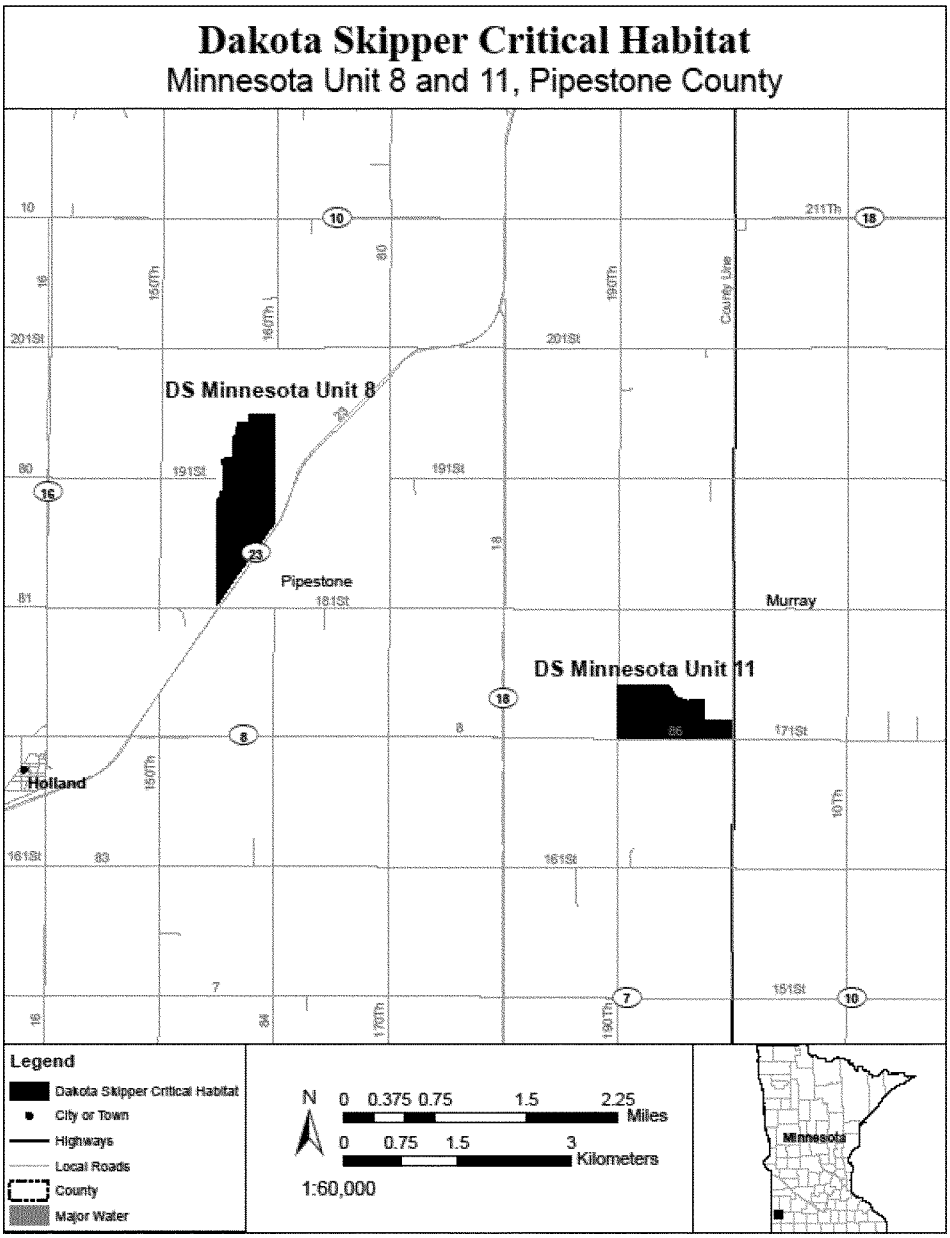
(12) DS Minnesota Unit 7, Lincoln County and Pipestone County, Minnesota. Map of DS Minnesota Unit 7 follows:



(13) DS Minnesota Units 8 and 11, Pipestone County, Minnesota. Map of DS Minnesota Units 8 and 11 follows:



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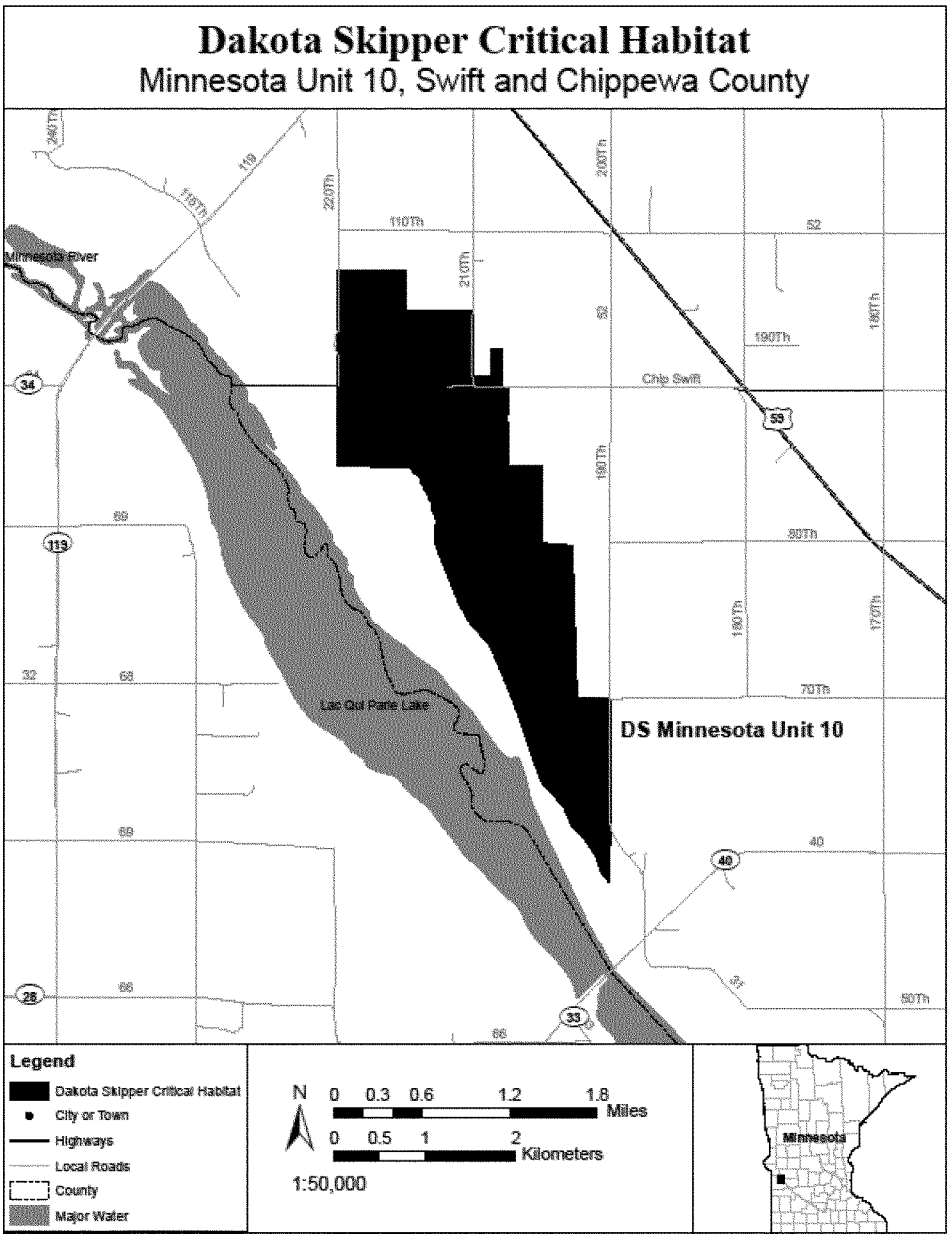
(15) DS Minnesota Unit 10, Chippewa County and Swift County, Minnesota. Map of DS Minnesota Unit 10 follows:



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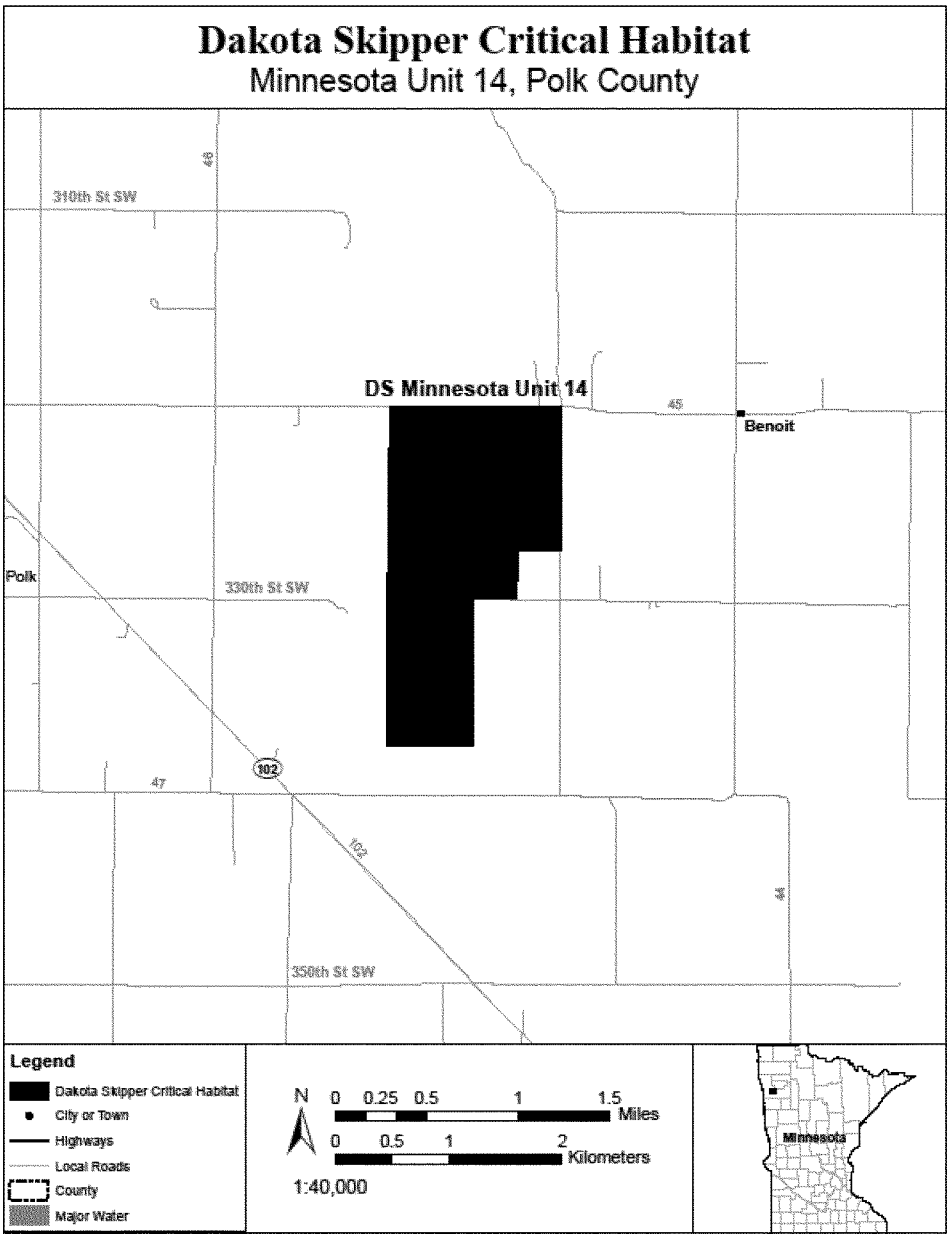
(18) DS Minnesota Unit 14, Polk County, Minnesota. Map of DS Minnesota Unit 14 follows:



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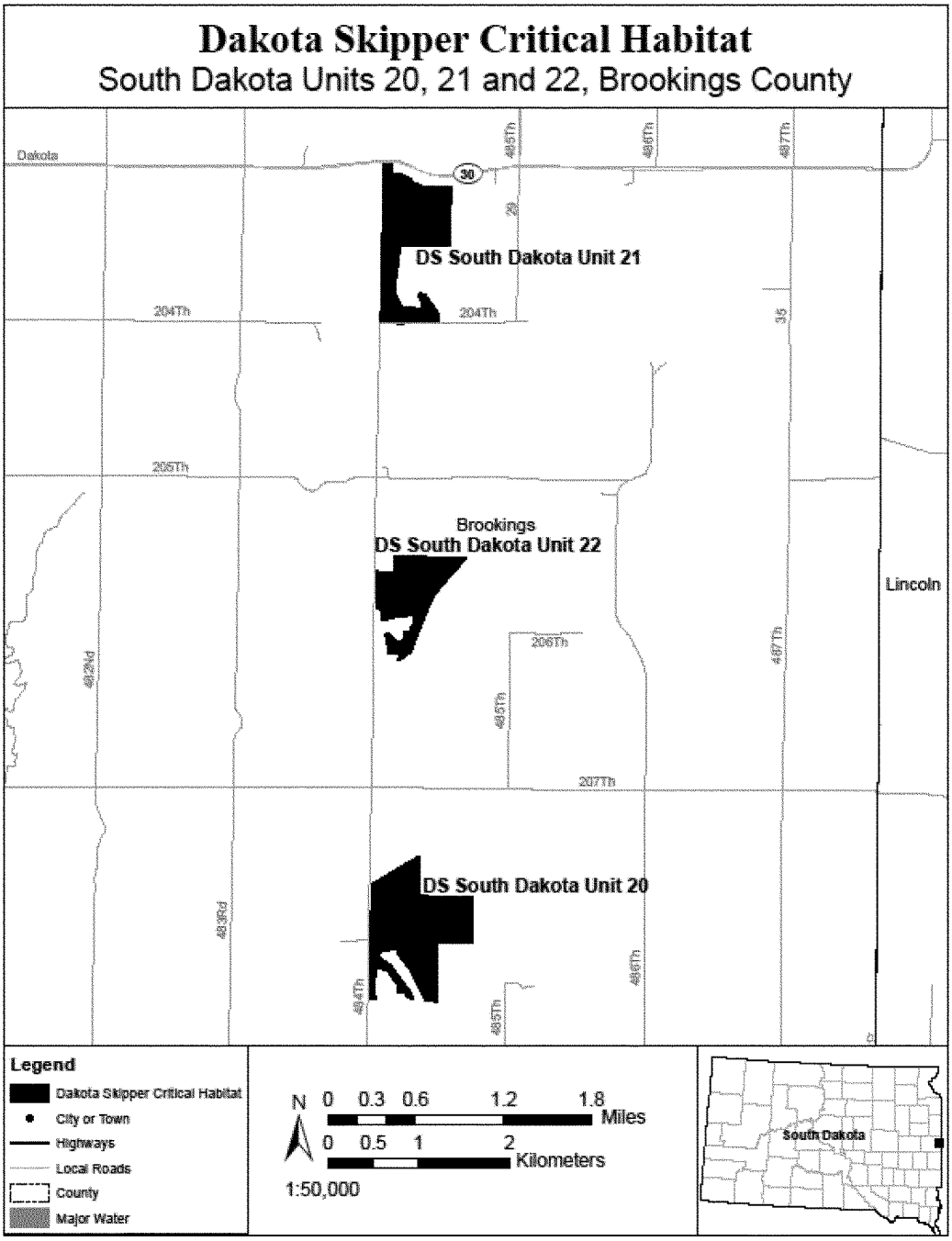
(41) DS South Dakota Units 20, 21, and 22, Brookings County, South Dakota. Map of DS South Dakota Units 20, 21, and 22 follows:



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Poweshiek Skipperling *(Oarisma poweshiek)*

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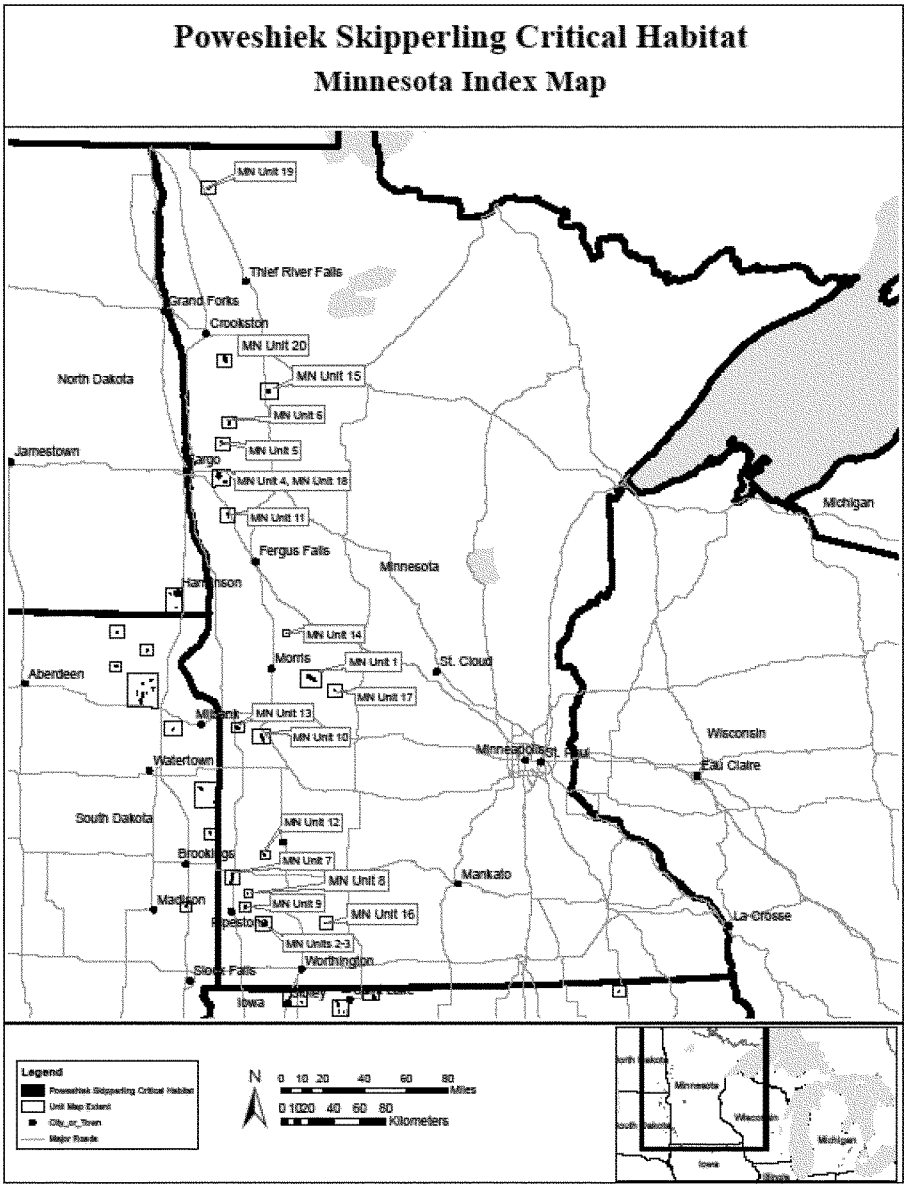
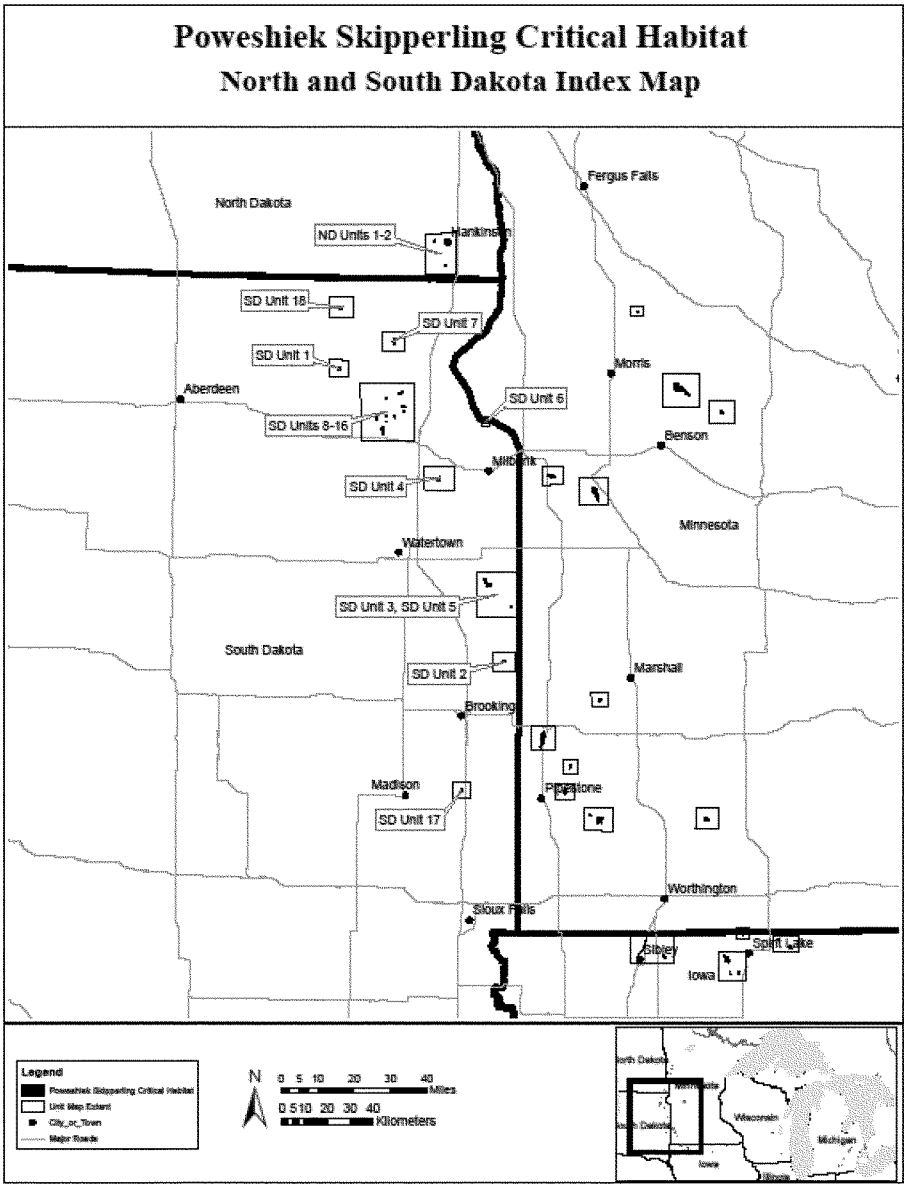
(7) Minnesota index map follows:

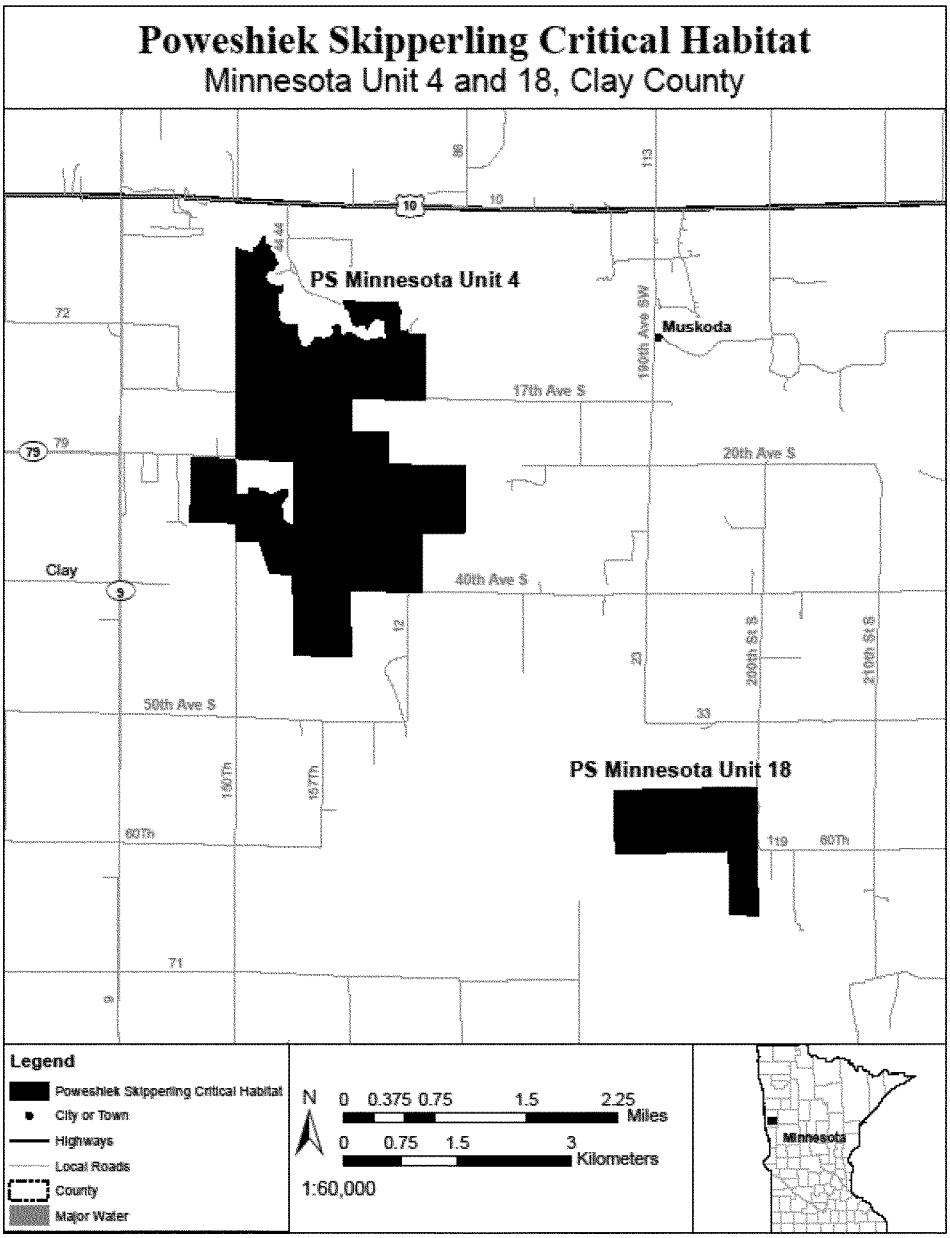


(8) North and South Dakota index map follows:

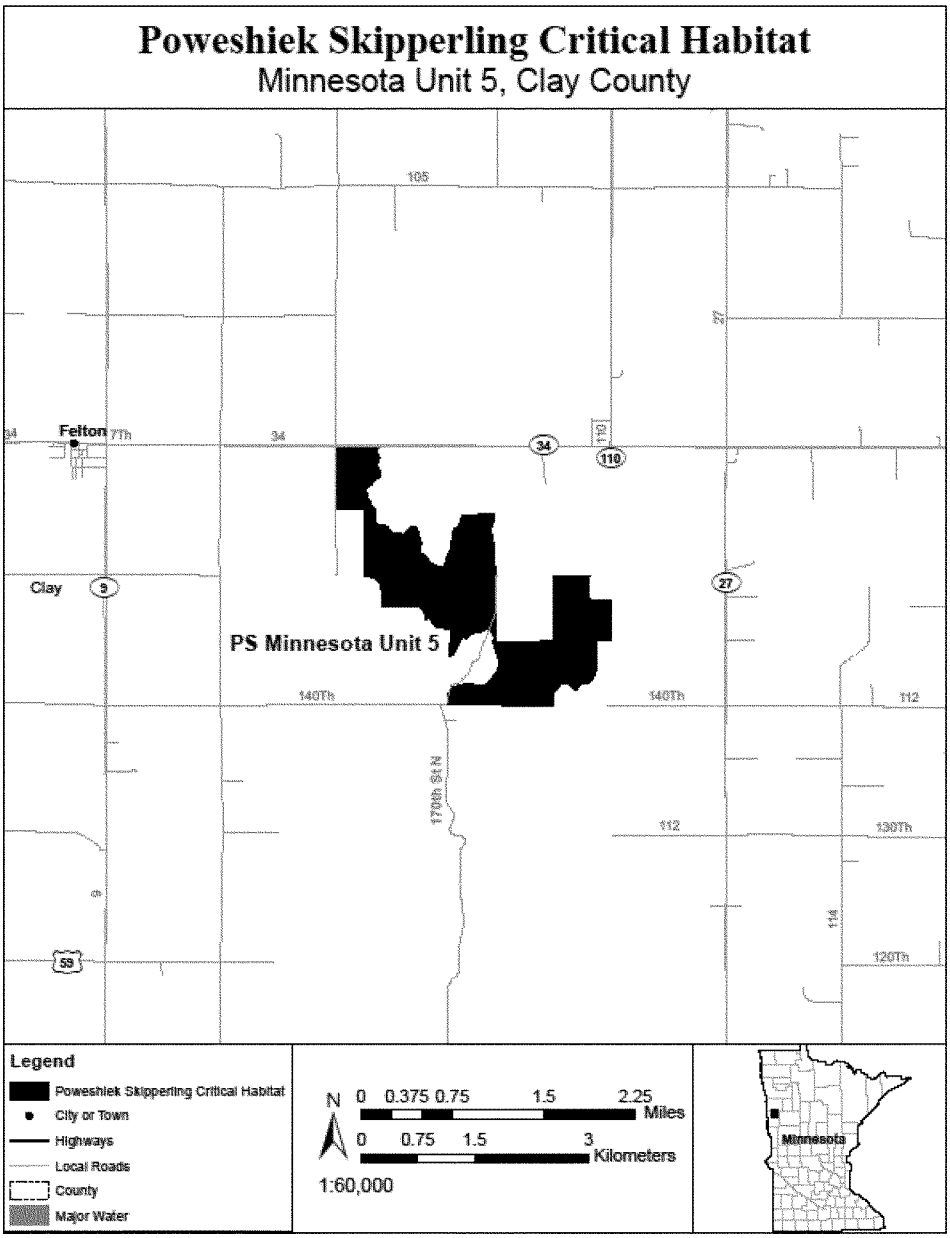


* * * * *

(28) PS Minnesota Units 4 and 18, Clay County, Minnesota. Map of PS Minnesota Units 4 and 18 follows:



(29) PS Minnesota Unit 5, Clay County, Minnesota. Map of PS Minnesota Unit 5 follows:



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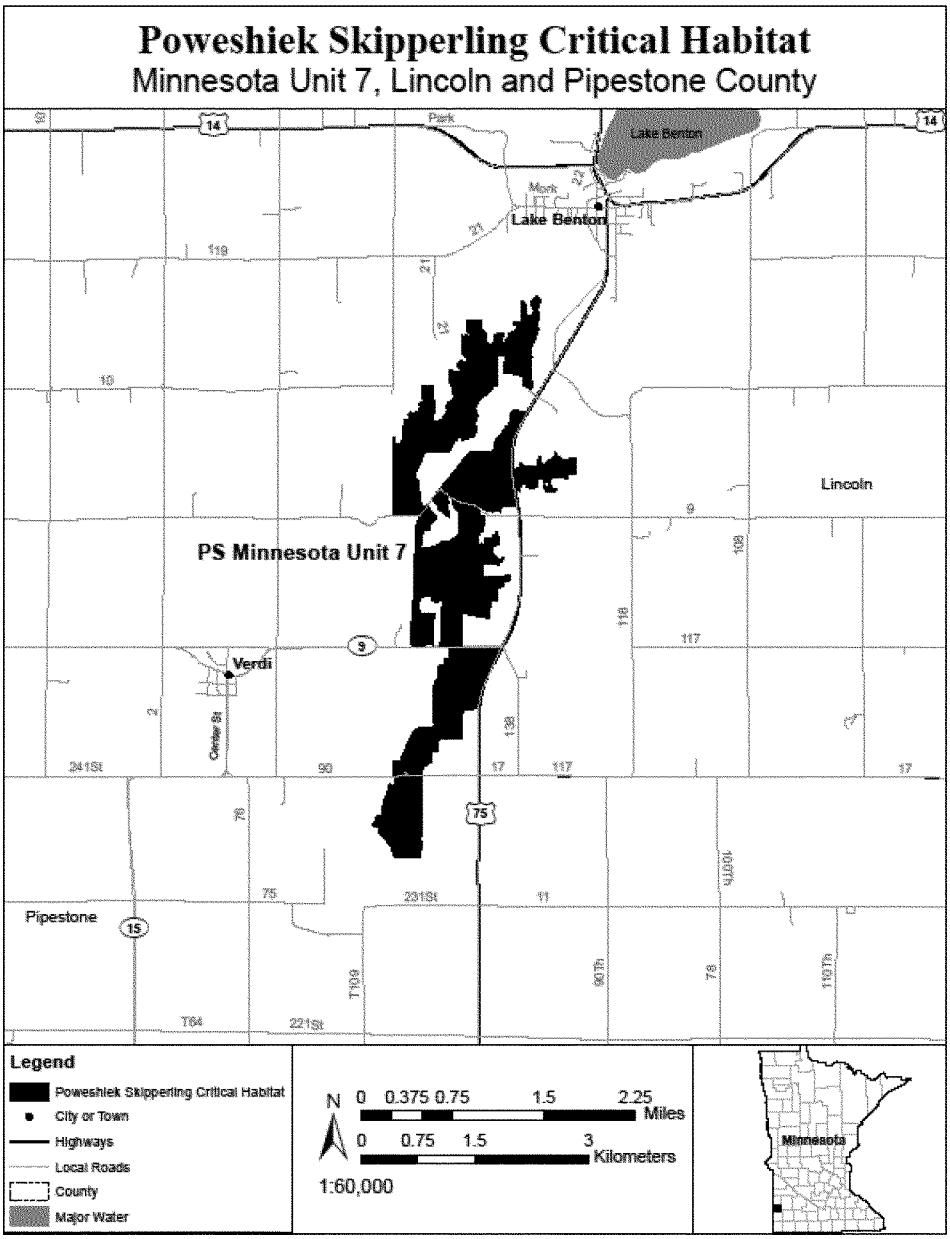
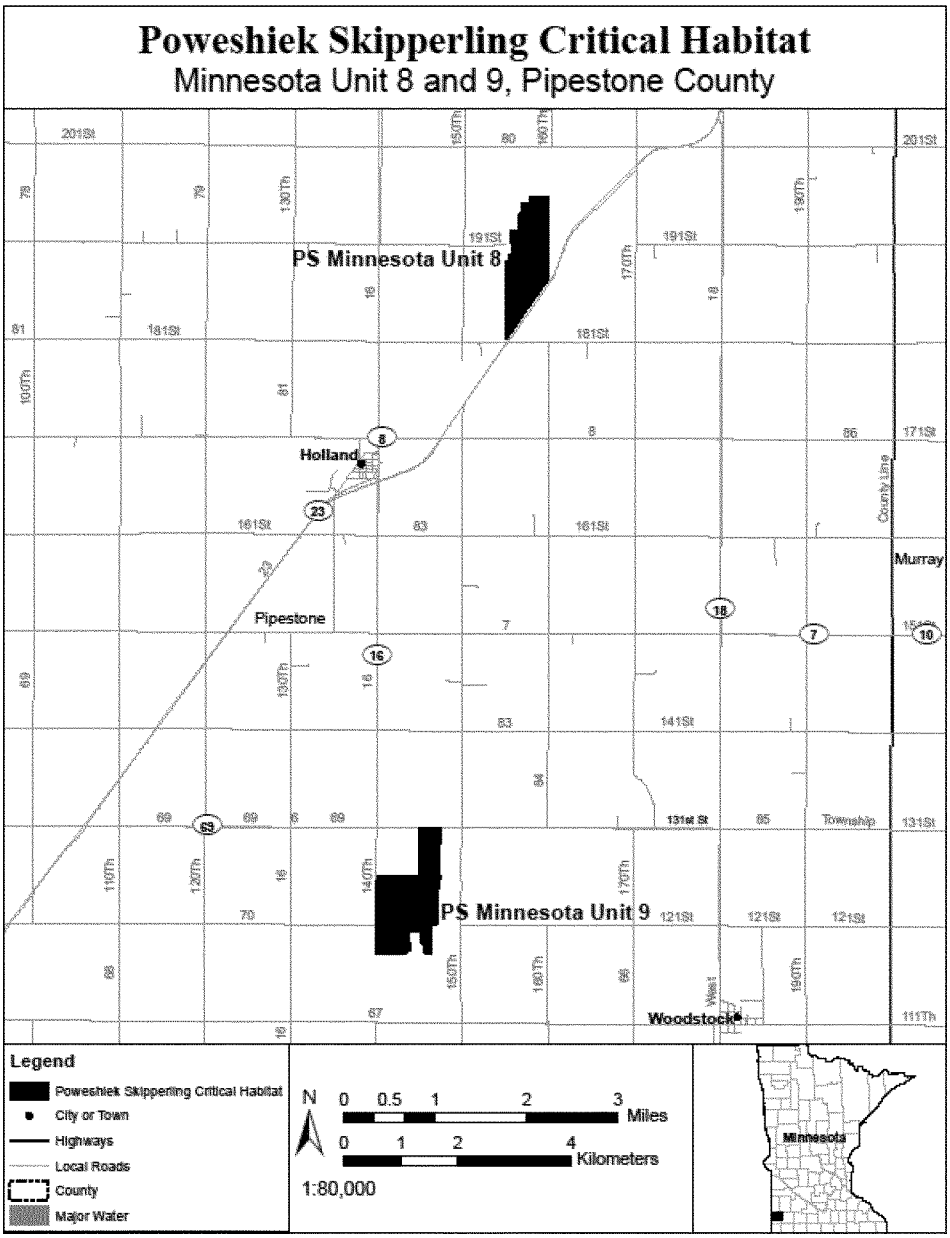
(31) PS Minnesota Unit 7, Lincoln County and Pipestone County, Minnesota. Map of PS Minnesota Unit 7 follows:

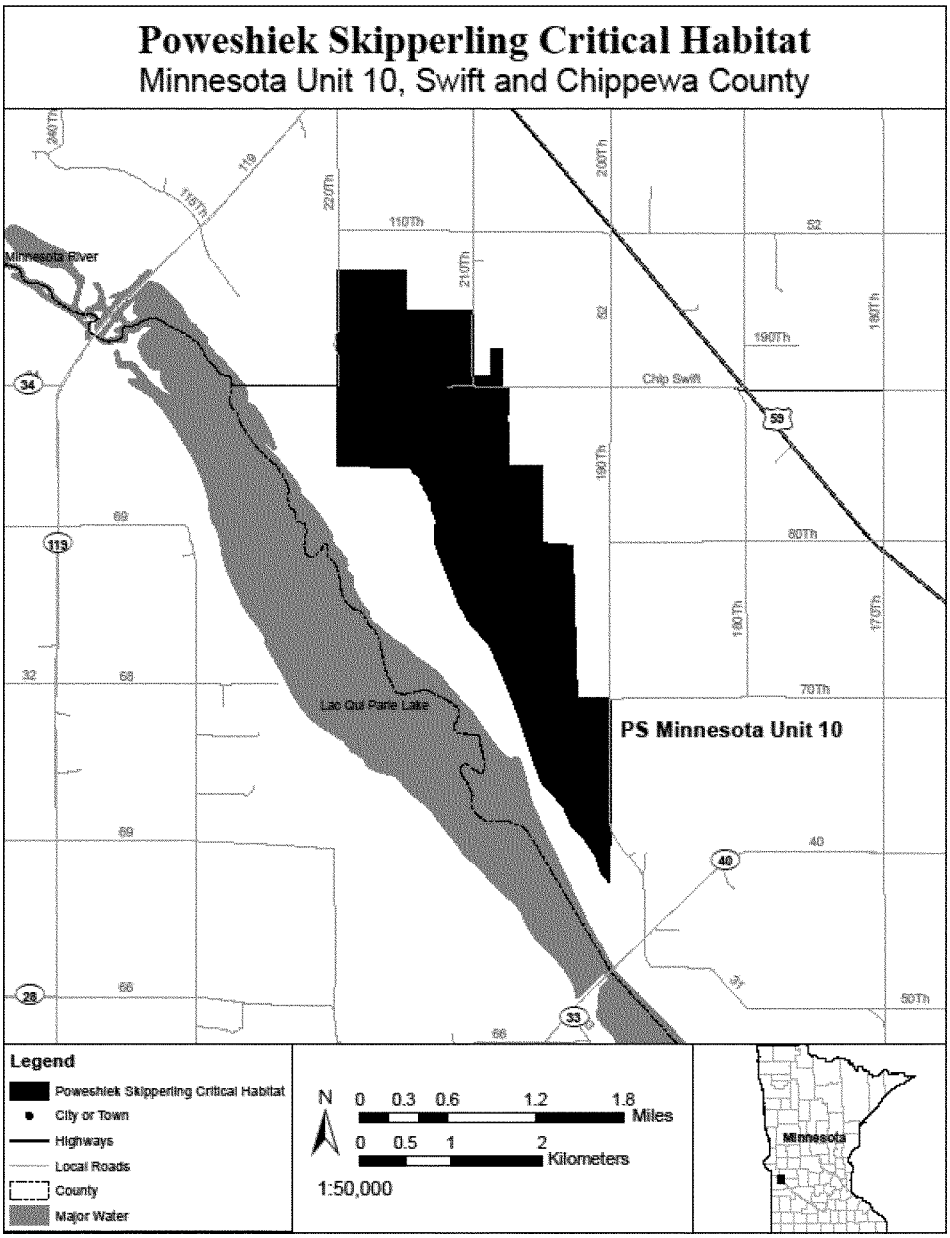


(32) PS Minnesota Units 8 and 9, Pipestone County, Minnesota. Map of PS Minnesota Units 8 and 9 follows:

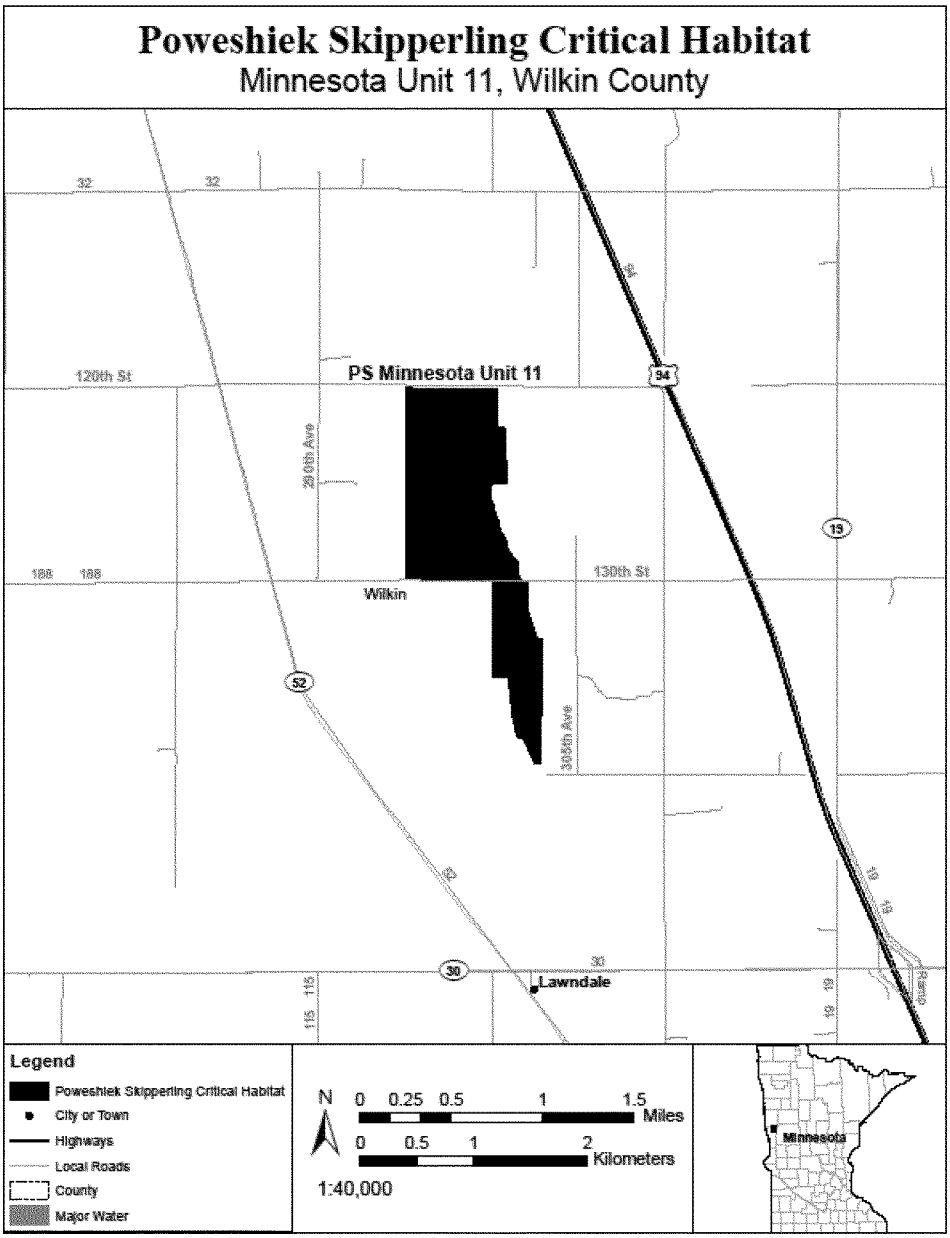


(33) PS Minnesota Unit 10, Chippewa County and Swift County, Minnesota.

Map of PS Minnesota Unit 10 follows:



(34) PS Minnesota Unit 11, Wilkin County, Minnesota. Map of PS Minnesota Unit 11 follows:



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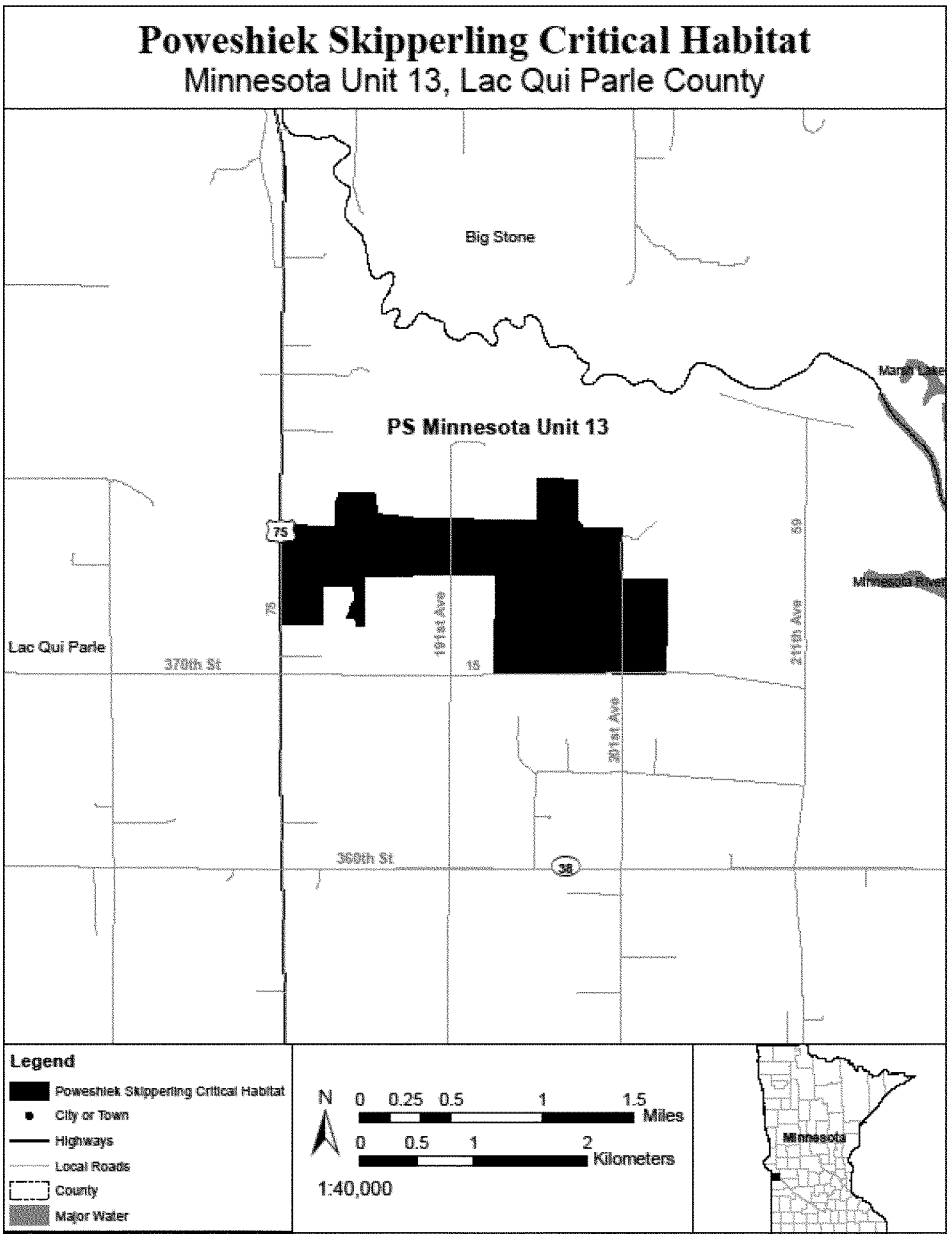
(36) PS Minnesota Unit 13, Lac Qui Parle County, Minnesota. Map of PS Minnesota Unit 13 follows:



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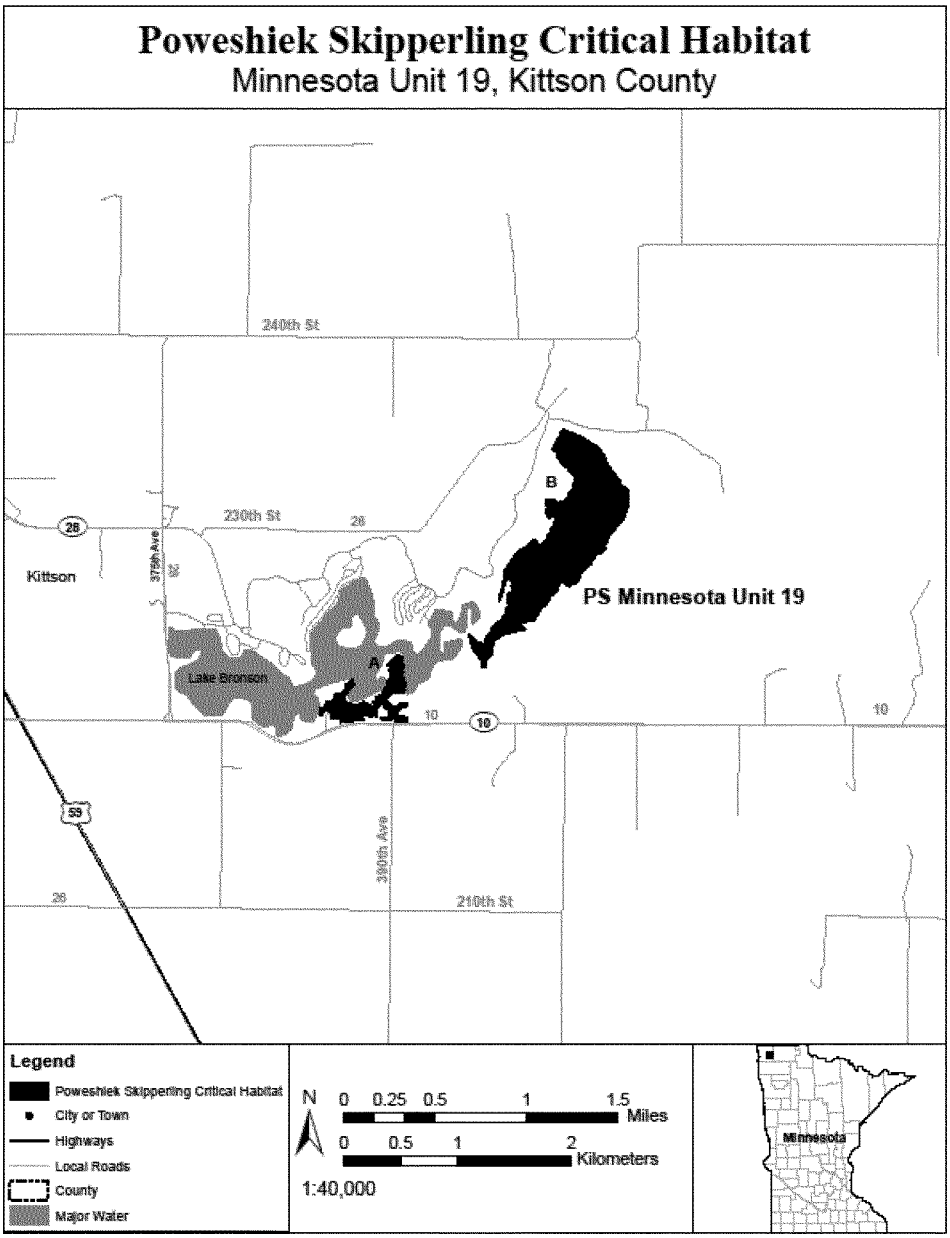
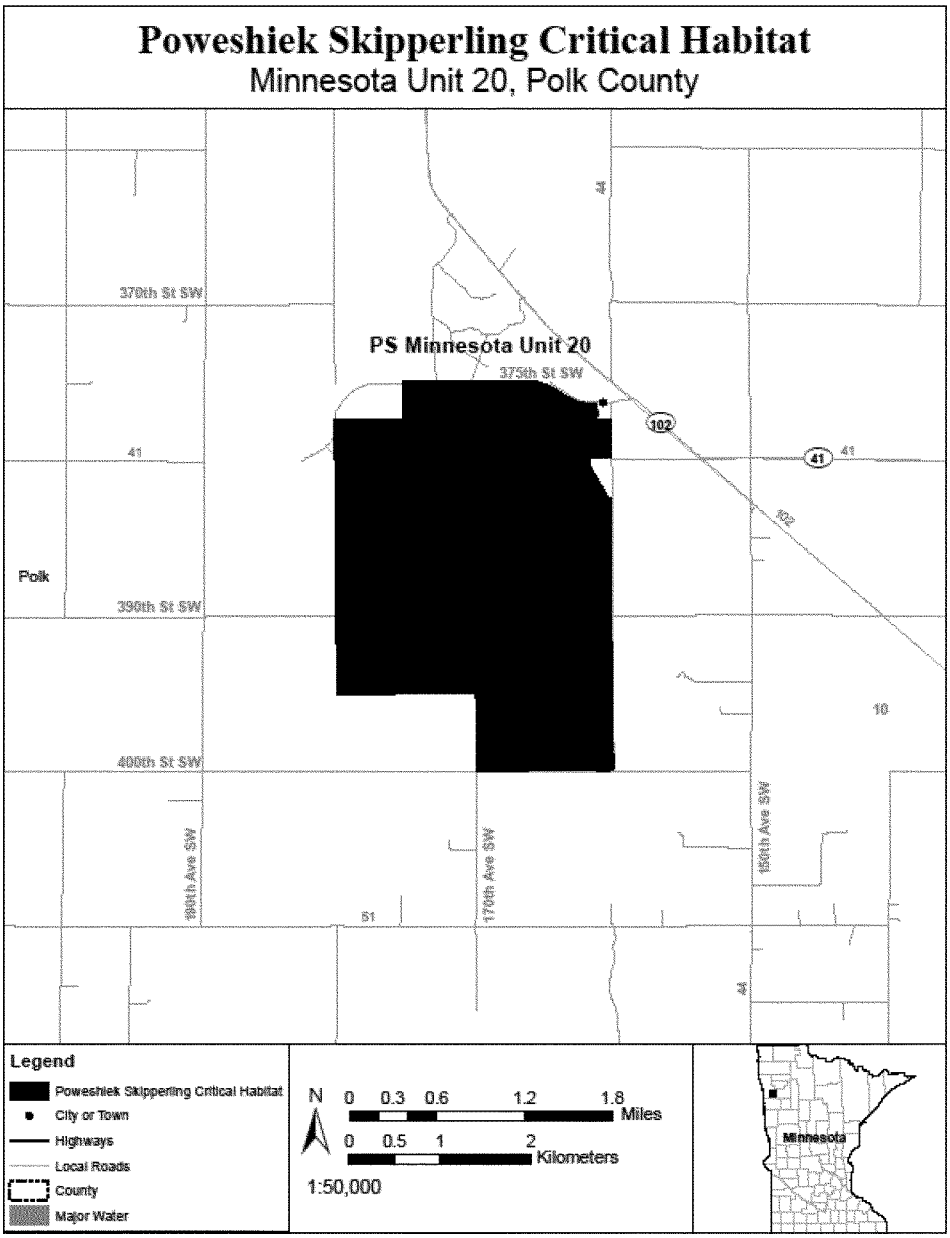
(41) PS Minnesota Unit 19, Kittson County, Minnesota. Map of PS Minnesota Unit 19 follows:



(42) PS Minnesota Unit 20, Polk County, Minnesota. Map of PS Minnesota Unit 20 follows:



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Dated: September 15, 2014.

Michael J. Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2014–22577 Filed 9–22–14; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2014–0035: 4500030113]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Tucson Shovel-nosed Snake as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the Tucson shovel-nosed snake (*Chionactis occipitalis klauberi*) as an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). After a review of the best available scientific and commercial information, we find that listing the Tucson shovel-nosed snake as an endangered or threatened species is not warranted, and, therefore, we are

removing this subspecies from our candidate list.

DATES: The finding announced in this document was made on September 23, 2014.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R2–ES–2014–0035. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, AZ 85021. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, AZ 85021; telephone 602–242–0210; facsimile 602–242–2513; email *incomingazcorr@fws.gov.* If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we will determine that the petitioned action is: (1) Not warranted, (2) warranted, or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

Previous Federal Actions

We received a petition, dated December 15, 2004, from the Center for Biological Diversity requesting that we list the Tucson shovel-nosed snake (*Chionactis occipitalis klauberi*) as an endangered or threatened species throughout its range and designate critical habitat within its range in the United States. The petition, which was clearly identified as such, contained detailed information on the natural history, biology, current status, and distribution of the Tucson shovel-nosed snake. It also contained information on what the petitioner reported as potential threats to the subspecies from urban development, agricultural practices, collecting, inadequacy of existing regulations, drought, and climate change. In response to the petitioner's requests, we sent a letter to the petitioner, dated September 7, 2005, explaining that, due to funding constraints in fiscal year 2005, we would not be able to address the petition in a timely manner. On February 28, 2006, the petitioner filed a 60-day notice of intent to sue the Department of the Interior for failure to issue 90-day and 12-month findings, and a proposed listing rule, as appropriate, in response to the petition as required by 16 U.S.C. 1533(b)(3)(A) and (B). In response to the notice of intent to sue, we announced our intention to submit a 90-day finding to the **Federal Register** as expeditiously as possible.

On July 29, 2008, we published in the **Federal Register** (73 FR 43905) our 90-day finding that the petition presented substantial scientific information indicating that listing the Tucson shovel-nosed snake may be warranted. On March 31, 2010 (75 FR 16050), we published a 12-month finding on the December 15, 2004, petition to list the Tucson shovel-nosed snake as an endangered or threatened species. In the 12-month finding, we found that listing the Tucson shovel-nosed snake as an endangered or threatened species was warranted but precluded by higher priority actions. Upon publication of the 12-month finding, we added the Tucson shovel-nosed snake to the candidate list. Candidate species are those fish, wildlife, and plants for which we have on file sufficient information on biological status and threats to propose them for listing, but for which development of a proposed listing regulation is precluded by other higher priority listing activities. The Tucson shovel-nosed snake remained a candidate through all of our subsequent annual candidate notices of review (75 FR 69222, November 10, 2010; 76 FR 66370, October 26, 2011; 77 FR 69994, November 21, 2012; and 78 FR 70104, November 22, 2013).

On September 9, 2011, the Service entered into a settlement agreement regarding species on the candidate list in multi-district litigation (Endangered Species Act Section 4 Deadline Litigation, No. 10–377 (EGS), MDL Docket No. 2165 (D.D.C. May 10, 2011)), which we refer to as the ''MDL settlement agreement. '' Per the MDL settlement agreement, the Service is required to submit a proposed rule or a not warranted 12-month finding to the **Federal Register** for the Tucson shovel-nosed snake in Fiscal Year 2014, which ends September 30, 2014. This 12-month finding fulfills that requirement of the MDL settlement agreement.

Status Assessment for the Tucson Shovel-Nosed Snake

Introduction

We completed a Species Status Assessment Report for the Tucson Shovel-Nosed Snake (SSA Report; Service 2014, entire), which is available online at *http://www.regulations.gov* under Docket Number FWS–R2–ES–2014–0035). The SSA Report provides a thorough assessment of Tucson shovel-nosed snake's biology and natural history, and assesses demographic risks, threats, and limiting factors in the context of determining viability and risk of extinction for the subspecies. In the SSA Report, we compile biological data and a description of past, present, and likely future threats (causes and effects) facing the Tucson shovel-nosed snake. Because data in these areas of science are limited, some uncertainties are associated with this assessment. Where we have substantial uncertainty, we have attempted to make our necessary assumptions explicit in the SSA Report. We base our assumptions in these areas on the best available scientific and commercial data. Importantly, the SSA Report does not represent a decision by the Service on whether this subspecies warrants listing as an endangered or threatened species under the Act. The SSA Report does, however, provide the scientific basis that informs our regulatory decision (see *Summary of Biological Status and Threats*), which involves the application of standards within the Act and its implementing regulations and Service policies (see *Finding*).

Summary of Biological Status and Threats

The SSA Report documents the results of the comprehensive biological status review for the Tucson shovel-nosed snake and provides a thorough

account of the subspecies' overall viability and, conversely, extinction risk (Service 2014, entire). The SSA Report contains the data on which this finding is based. The following is a summary of the results and conclusions from the SSA Report.

The Tucson shovel-nosed snake is a small, non-venomous snake (250–425 millimeters (mm) (9.84–16.73 inches (in)) total length) in the family Colubridae, with a shovel-shaped snout, an inset lower jaw, and coloring that mimics coral snakes (*Micrurus* spp.) (Mahrdt *et al.* 2001, p. 731.1). The Tucson shovel-nosed snake is a subspecies of the western shovel-nosed snake (*Chionactis occipitalis*). The western shovel-nosed snake consists of four subspecies: Colorado Desert shovel-nosed snake (*C. o. annulata*), Mohave shovel-nosed snake (*C. o. occipitalis*), Nevada shovel-nosed snake (*C. o. talpina*), and Tucson shovel-nosed snake. The range of the western shovel-nosed snake extends from southern Nevada and southern California, across southwestern Arizona, and into Mexico. Snakes of the family Colubridae, which includes all shovel-nosed snakes, tend to be abundant in their respective habitats, widely distributed, and chiefly non-venomous; the family includes the kingsnakes, gartersnakes, and watersnakes. The Tucson shovel-nosed snake has been recognized as a subspecies of the western shovel-nosed snake since 1941. However, the original subspecies description was based on one color pattern variation compared to the other subspecies. More recent genetic studies, explained in detail below, have clarified that the identification of the subspecies based on color patterning is inaccurate and leads to under-representation of the actual extent of the subspecies' population. The geographical western extent of snakes with this distinguishing color pattern variation was never documented; therefore, the exact range of the subspecies was never described and was thought to be substantially smaller than our current understanding of the range as described below.

At the time of the 2008 90-day and 2010 12-month findings, we accepted the taxonomic status and distribution of the subspecies as described by Mahrdt *et al.* (2001, entire). The range supported by Mahrdt *et al.* (2001, entire) encompassed approximately 1,149,367 hectares (ha) (2,840,147 acres (ac)) and extended from Phoenix, Arizona, to Tucson, Arizona. A large intergrade zone was thought to exist where the Tucson shovel-nosed snake's and Colorado Desert shovel-nosed snake's ranges overlapped; an intergrade zone is defined as an area of overlap between the ranges of two subspecies where individuals may possess intermediate characters (attributes or features that distinguish a subspecies, such as coloration) or traits of both subspecies. Snakes within the intergrade zone between Tucson shovel-nosed snake and Colorado Desert shovel-nosed snake possessed color patterns characteristic (or intermediate) of both subspecies. Following our 90-day finding (July 29, 2008; 73 FR 43905), genetic studies involving mitochondrial DNA were conducted to help inform the taxonomy and genetic structure of the Tucson shovel-nosed snake and the intergrade zone. The data from this genetic study initially suggested that the Tucson shovel-nosed snake was not a valid subspecies. Therefore, we requested peer review and input in September 2008 on the issue of taxonomic classification and distribution of the snake. Four out of six peer reviewers believed that, based on genetic work by Wood *et al.* (2008, entire), the subspecies did not warrant taxonomic recognition; however, the peer reviewers also recognized that more conclusive genetic studies, including microsatellite data, were needed.

These genetic studies were not complete until after our 2010 12-month finding. Our 2010 12-month finding for the Tucson shovel-nosed snake (March 31, 2010; 75 FR 16050) acknowledged the uncertainty of the taxonomy of the snake, but recognized the best available scientific information continued to recognize the Tucson shovel-nosed snake as a subspecies. In the 2010 12-month finding, we continued to recognize the Mahrdt *et al.* (2001) representation of the range (which was limited to 1,149,367 ha (2,840,147 ac)) with a large intergrade zone with the Colorado Desert shovel-nosed snake subspecies) and description as the best available science at that time. The 2010 12-month finding concluded that listing of the Tucson shovel-nosed snake was warranted but precluded by higher priority listing actions.

Since the publication of our 2010 12-month finding (March 31, 2010; 75 FR 16050), additional genetic work has been conducted for the Tucson shovel-nosed snake. This new genetic work supports that the Tucson shovel-nosed snake is a valid subspecies and that the subspecies occupies a much larger range than previously believed. A U.S. Geological Survey study used both mitochondrial DNA and 11 microsatellite loci to assess whether patterns of population genetic structure follow the spatial structuring of phenotypic variation (variation in observable characteristics such as shape, color pattern, or even behavior) that originally led to the subspecies description and included samples from all subspecies of the western shovel-nosed snake throughout its range. The results and data from this study were made available to us prior to development of this SSA Report.

We now understand that the western boundary of the estimated range of the Tucson shovel-nosed snake is almost 322 kilometers (km) (200 miles (mi)) west of the range described by Mahrdt *et al.* (2001) and used by the Service to represent the range of the snake in our 2010 12-month finding (see Figure 3 of the SSA Report). The estimated range supported in the U.S. Geological Survey study includes approximately 2,000,655 ha (4,943,728 ac) more than the range we identified in our 2010 12-month finding; this represents a 274 percent increase in our understanding of the estimated range of the subspecies. We recognize that there is considerable color pattern variation throughout the range of the Tucson shovel-nosed snake; however, the genetic data indicate that, despite the color pattern expressed, snakes previously thought to be a different subspecies within this range are genetically Tucson shovel-nosed snakes. Based on this new information, the current estimated range of the snake encompasses 3,150,022 ha (7,783,875 ac) of land.

The current estimated range of the Tucson shovel-nosed snake includes Pinal, Maricopa, Yavapai, Yuma, Pima, and La Paz Counties in central and western Arizona. Although little is known about the specific habitat requirements of the Tucson shovel-nosed snake within its current estimated range, the subspecies is generally found within the Arizona Upland and Lower Colorado River Valley subdivisions (regions with diverse and distinctive vegetation) of the Sonoran Desertscrub biotic community, in areas containing: (1) Soils comprised of soft, sandy loams, with sparse gravel; and (2) sufficient prey items (insects and other arthropods). Of the total estimated range, 1,835,591 ha (4,535,845 ac) (approximately 58 percent) contain the appropriate Sonoran Desertscrub habitat for the snake (see Figure 1 of the SSA Report).

In conducting our status assessment, we first considered what the Tucson shovel-nosed snake needs to ensure viability. We generally define viability as the ability of the species to persist over the long term and, conversely, to avoid extinction. We then evaluated whether or not the vital resources needed for the snake's persistence

currently exist and the repercussions to the subspecies when those resources are missing, diminished, or inaccessible. We next consider the factors that may interfere with the snake's needs, including historical, current, and future factors. Finally, considering the information reviewed, we evaluated the current status and future viability of the subspecies in terms of resiliency, redundancy, and representation.

Resiliency is having sufficiently large populations for the subspecies to withstand stochastic events; in the case of the Tucson shovel-nosed snake, resiliency is likely best measured by the extent of what the best available information describes as suitable habitat: intact Sonoran Desertscrub vegetation that contains soft, sandy loam soils, and supports abundant prey. Although we do not have specific metrics on population health or abundance for the Tucson shovel-nosed snake, we assume that distribution of suitable habitat is an appropriate surrogate to indicate resiliency for this subspecies because snakes are distributed throughout the entirety of their range and we assume that these snakes generally occupy areas where suitable habitat exists. Redundancy is having a sufficient number of populations for the subspecies to withstand catastrophic events within part of its range and can be measured through the duplication and distribution of resilient populations across its range. Representation is having the breadth of genetic makeup of the subspecies to adapt to changing environmental conditions and can be measured by the genetic diversity within and among populations, and the ecological diversity of populations across the subspecies' range. In the case of the Tucson shovel-nosed snake, we evaluated representation based on the extent of the current estimated geographical range and the variability of habitat characteristics within this range as indicators of genetic and ecological diversity.

For the Tucson shovel-nosed snake to be considered viable, individual snakes need the specific vital resources for survival and completion of their life cycles. Although there is a general lack of information regarding what the necessary vital resources are for the Tucson shovel-nosed snake to complete its life cycle, one study indicated that this snake selected habitat that included scattered sand hummocks (low mounds or ridges), crowned with mesquite or other desert shrubs, which can provide refuges for shovel-nosed snakes. The Tucson shovel-nosed snake is also found in creosote-mesquite floodplain environments, as well as sandy dunes, desert washes and valleys, and bajadas, most frequently in sparsely vegetated, sandy to gravelly habitats, and is less abundant in rocky terrain. Specifically, snakes are found within the Arizona Upland and Lower Colorado River Valley subdivisions of the Sonoran Desertscrub biotic community, in areas containing: (1) Soils comprised of soft, sandy loams, with sparse gravel; and (2) sufficient prey items (insects and other arthropods).

We assume that the presence of the appropriate habitat types (as described above) throughout the subspecies' range provides sufficient area and suitable habitat to support the subspecies. This is because the Tucson shovel-nosed snake appears to be a habitat generalist occurring within the relatively broad biotic community described above. From an ecological perspective, the term habitat generalist describes a species that can tolerate a relatively wide range of environmental conditions, whereas habitat specialists can only tolerate a relatively narrow range of environmental conditions. Tucson shovel-nosed snakes are often found in open areas with sparse vegetation, and there are no specific habitat requirements for the percent vegetative cover preferred by this species. Rather, the subspecies' general requirements include proper soil and vegetation types, which provide both cover from predators and habitat for prey items. Additionally, connectivity between populations is essential to maintain diversity and the ability to find mates. Because generalists can tolerate a wider range of environmental conditions, they can generally adapt to minor, localized environmental changes within their broader habitat. Thus, the Tucson shovel-nosed snake is likely most sensitive to habitat changes that entirely remove suitable habitat from the subspecies' range rather than changes that result only in habitat modification. For these reasons, we focused our analysis in the SSA Report on landscape-scale stressors that could result in habitat loss.

Within the redefined range of the subspecies, we do not have systematic survey data for habitat or population abundance estimates, and there are no minimum viable population estimates for the Tucson shovel-nosed snake. Throughout the areas within the subspecies' range that have had systematic surveys, populations of snakes appear to be stable (available information indicates that the species status neither improved nor declined since the last reporting period; i.e., population numbers remained constant) and persisting according to the survey data and analyses (Rosen 2003, entire; Rosen 2004; all and 2008b, entire; Arizona Game and Fish Department 2008, p. 2; Mixan and Lowery 2008, entire; Grandmaison and Abbate 2011, entire; Jones *et al.* 2011, p. 65; Grandmaison *et al.* 2012, entire; Leavitt *et al.* 2013a, entire). While we do not have specific data for densities of Tucson shovel-nosed snakes throughout their range, collection data indicate that the subspecies is found throughout the entirety of its estimated range (see Figure 6 in the SSA Report). We expect areas of unsurveyed, suitable habitat to support similar populations to those areas that have been systematically surveyed because density of a species tends to be greatest near the center of its range and gradually declines toward the boundaries (Brown 1984, p. 258) and collection data generally tends to be biased towards areas that are more easily accessed by surveyors, such as along paved roads. In this case, based on the proximity of snakes collected to adjacent areas of unsurveyed, suitable snake habitat, including more inaccessible areas of suitable habitat, we assume that the Tucson shovel-nosed snake occupies these unsurveyed areas where suitable habitat exists. This conclusion is consistent with population data for Tucson shovel-nosed snakes in similar habitats throughout its range. Each collection location in Figure 6 of the SSA Report represents multiple individuals collected at each site. For example, although there are three locality points in La Paz County in the western portion of the range, we have data in our files for 11 Tucson shovel-nosed snakes collected at those three points. Many times, specimens are collected in close proximity to each other and are represented by a single point on the map. Therefore, while Figure 6 of the SSA Report represents what we know regarding the distribution of the Tucson shovel-nosed snake, it underestimates the actual number of snakes collected or sampled at these locations. Overall, we expect that the subspecies' populations throughout the snake's range currently have fairly similar population abundances to the areas that have been surveyed (please refer to Chapter 4 ''Species Current Conditions'' of the SSA Report).

Potential threats to the viability of the Tucson shovel-nosed snake occur in the form of urban development, solar facilities, and roads associated with both urban development and solar facilities. These various factors result in habitat loss, thereby contributing to the

potential decline or extirpation of local populations of Tucson shovel-nosed snakes. Because the snake is a habitat generalist (as described above), we assume that the presence of the appropriate habitat types will contribute to the viability of the subspecies and that the removal of these habitat types due to development will decrease the subspecies' viability. Thus, the potential threats we analyzed in the SSA Report focus on the factors that may result in habitat loss. We evaluated these factors in the near term (over about the next 10 years) and into the future (over the next 11 to 50 years). Based on our analysis of the subspecies and the factors affecting it in the future, we believe that 50 years is the longest length of time that we can reliably predict the future habitat conditions of the subspecies' range. This is because the potential threats to the subspecies focus on loss of suitable habitat, and our projections of management of lands upon which the subspecies relies is limited to approximately 50 years.

Based on the best scientific and commercial data available, the Tucson shovel-nosed snake occupies a range of 3,150,022 ha (7,783,875 ac), with 1,835,591 ha (4,535,845 ac) of the current estimated range being suitable habitat, and habitat development will impact only a small percentage of that range. Currently, 608,433 ha (1,503,472 ac) of land within the estimated range of the Tucson shovel-nosed snake falls within 31 municipal boundaries; the majority of the areas within these municipal boundaries have either already been developed or are planned for some level of development. Large areas of existing urban development and planned development that overlap with the subspecies' habitat primarily occur in the eastern and north-central portion of its range along the Interstate 10 corridor between Tucson and Phoenix; however, we do not have information to indicate when the planned communities will be developed or how much Tucson shovel-nosed snake habitat would be lost as a result. Thus, our analysis includes the total area of all municipalities, and we assume that all areas would be developed within each municipality. We did not differentiate between existing and potential future development; rather, we assumed all currently or reasonably potentially developed municipal lands would be lost to the subspecies. These areas of existing or potential future development represent approximately 19 percent of the 3,150,022 ha (7,783,875 ac) of the current estimated range of the Tucson shovel-nosed snake. These area of existing or potential future development are 33 percent of the 1,835,591 ha (4,535,845 ac) of Tucson shovel-nosed snake suitable habitat. We anticipate, but did not quantify or rely on, that the area that would be developed would be less than the total area described above, resulting in a reduced contribution to potential habitat loss than the maximum projected if all of this development occurs.

Lands managed by the Arizona State Land Department (ASLD) containing habitat for the Tucson shovel-nosed snake are prevalent throughout much of its range (see Figure 2 of the SSA Report), and these ASLD lands have the potential to be sold for development, especially to facilitate growth around Phoenix and in western Pinal County. For example, Superstition Vistas, a large master planned community of approximately 275 square miles (712 square kilometers) located between Florence and Apache Junction, has been conceptually planned by the ASLD, and this plan has been incorporated into Pinal County's Comprehensive Plan (*http://www.superstition-vistas.org*). These ASLD lands where development may occur are included in the percentage of lands subject to existing or potential future development within the Tucson shovel-nosed snake's range. However, many of these ASLD lands, especially in the western portion of the subspecies' range, are so remote that we do not reasonably anticipate them being developed in the foreseeable future. Regardless, we included the potential development of these lands in our analysis of existing and potential future development. Other areas like Superstition Vistas are highly likely to be developed in the coming years. In most cases, community master plans indicate that these developments may incorporate open space areas containing habitat for the snake. These open space areas are anticipated to maintain some degree of suitable habitat for the Tucson shovel-nosed snake, although we do not know to what extent these areas would contribute to the snake's viability. Overall, at least in the near future, these ASLD lands are expected to continue to contribute to the resiliency, redundancy, and representation of the snake throughout its range. However, in the long term, some of these ASLD lands may be developed and contribute to habitat loss, and were considered in the SSA Report as potential lost habitat to the subspecies.

Similar to urban development, solar energy development and associated transmission corridors may contribute to habitat loss affecting the Tucson shovel-nosed snake. All of these activities may impact the subspecies through removal and potential contamination of remaining habitat and increased potential for road kill. Currently, there is one approved solar facility and two applications for new solar facilities that have been received by the Bureau of Land Management (BLM) within the range of the snake. The approved facility does not have a power purchase agreement; therefore, we are uncertain if or when it will actually be constructed. We also are uncertain whether the facilities associated with the two applications will be approved or built. If all three of the solar facilities are constructed, the resulting habitat lost would include approximately 7,070 ha (17,472 ac). This comprises less than one percent of the land within suitable habitat of the current estimated range of the snake. If all three of these facilities are constructed, there would likely be some level of diminished resiliency associated with local populations of snakes. However, the overall redundancy and representation of populations is expected to remain at current levels due to the size of the subspecies' range and the fact that these solar facilities are anticipated to be limited in occurrence, only removing a small fraction of available habitat compared to the total habitat available to snakes throughout their range.

Roadways and transportation corridors raise similar concerns for the Tucson shovel-nosed snake. In most instances, new roads would be associated with urban development or solar facilities. Roadways may remove suitable habitat for the snake and could result in fatality of individuals. However, data in our files indicate that populations of Tucson shovel-nosed snakes are currently persisting along roads in areas of high traffic use. Although roads have been documented to be detrimental to snakes, particularly individuals, long-term studies show that they do not have as significant an effect on the resiliency or redundancy of populations as previously believed. Off-highway vehicle (OHV) use could also have similar affects to Tucson shovel-nosed snakes through habitat degradation when these vehicles create new trails. However, OHV use is most likely to occur on ASLD or private lands near larger urban developments, because OHV use is restricted on public lands throughout the subspecies' range. Thus, the limited use of OHVs on most BLM lands, which encompasses a large portion of lands with the subspecies' current estimated range, is not expected

to reduce resiliency and redundancy of the subspecies throughout its range.

Although there are some potential impacts to the Tucson shovel-nosed snake resulting from urban development, solar development, and roads associated with both forms of development, the estimated range of the Tucson shovel-nosed snake includes large tracts of lands managed by the BLM that contain suitable habitat for the snake. Collectively, these specially managed areas include approximately 770,163 ha (1,903,115 ac), which represents approximately 42 percent of the 1,835,591 ha (4,535,845 ac) of the suitable habitat within the current estimated range of the Tucson shovel-nosed snake. These lands include wilderness areas, Areas of Critical Environmental Concern (ACECs), national monuments, and a wilderness study area. In addition to these designated areas, there are several other tracts of BLM land that are managed for wilderness characters and wildlife habitat within the range of the subspecies. Although none of these lands are specifically managed for the benefit of the Tucson shovel-nosed snake, they are managed to maintain their natural state. As discussed previously, the subspecies is a habitat generalist, and we assume that general habitat management of these specially managed BLM lands will contribute to maintenance of suitable habitat for the subspecies. Further, we expect that these specially managed lands will be protected from potential impacts in the foreseeable future and, thus, are likely to continue to provide suitable habitat for the Tucson shovel-nosed snake into the future. BLM lands outside of these special management areas are still subject to multiple-use management, primarily livestock grazing and recreational use, including OHV use. However, we have no evidence that the effects of livestock grazing are a threat to Tucson shovel-nosed snakes, and OHV use is restricted to existing routes under all BLM Land and Resource Management Plans. Therefore, BLM lands that allow for livestock grazing and limited OHV use will continue to provide suitable habitat for the Tucson shovel-nosed snake.

Although most of the BLM land within the subspecies' range occurs in the eastern portion of the Tucson shovel-nosed snake's range, the western portion of the snake's range also includes large tracts of land managed by the ASLD. This land can be sold at any time for the benefit of the State Trust Land beneficiaries, but these lands in the western portion of the snake's range are remote, and many are currently used for livestock grazing. Therefore, we do not expect them to be sold in the foreseeable future and anticipate that they will remain as suitable habitat for the Tucson shovel-nosed snake. ASLD lands in the eastern portion of the range of the snake have high potential for development; however, as discussed above, they represent only a limited portion of the suitable habitat available throughout the range of the snake. Because these ASLD lands currently appear to support suitable Sonoran Desertscrub habitat for the Tucson shovel-nosed snakes and the subspecies is a habitat generalist, we assume that large tracts of specially managed BLM land and remote ASLD land provide habitat for the snake. In addition, we have location data that indicate the snake is relatively evenly distributed throughout its range, including on these protected lands (see ''Abundance'' section of the SSA Report).

In summary, we evaluated a variety of different factors that could contribute to habitat loss for the subspecies. Urban development has the highest potential to occur within the subspecies' range and is likely to cause some level of habitat loss affecting the Tucson shovel-nosed snake. Urban development is most likely to occur in the eastern and north-central portion of the snake's range along the Interstate 10 corridor between Phoenix and Tucson and other outlying areas. If this predicted urban development occurs at the high-end estimates we discuss in the SSA Report, the total habitat lost is estimated to be approximately 33 percent of the Tucson shovel-nosed snake's suitable habitat. Conversely, protected lands will likely continue to provide suitable habitat for the Tucson shovel-nosed snake. Large areas of BLM land, including vast areas of specially managed lands, containing suitable habitat occur throughout the range of the subspecies. These specially managed BLM lands include approximately 42 percent of the suitable habitat throughout the snake's current estimated range. All of these public lands containing habitat for the Tucson shovel-nosed snake are expected to be managed as such in perpetuity, ensuring continued resiliency, redundancy, and representation of snake populations throughout its range. Overall, we expect some level of habitat loss to result from urban development, solar energy development, and roads associated with both forms of development. However, these impacts do not currently have, nor are they likely to have in the future, a significant species-level effect because much of the development has already occurred, and the spatial and temporal effect of development into the foreseeable future will be limited and is offset by the presence of protected lands. Our new understanding of the size of the subspecies' range, the snake's known distribution throughout its range, and the lack of pervasive threats throughout its range indicate the existence of the necessary resources for the subspecies' persistence now and in the long term, even if development occurs as described above. In conclusion, due to the distribution and extent of suitable habitat within the subspecies' current estimated range, the subspecies exhibits resiliency, redundancy, and representation such that it does not meet the definition of an endangered or a threatened species under the Act.

Finding

Standard for Review

Section 4 of the Act, and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(b)(1)(a) of the Act, the Secretary is to make endangered or threatened species determinations required by the section 4(a)(1) solely on the basis of the best scientific and commercial data available to her after conducting a review of the status of the species and after taking into account conservation efforts by States or foreign nations. The standards for determining whether a species is an endangered or threatened species are provided in section 3 of the Act. An endangered species is any species that is ''in danger of extinction throughout all or a significant portion of its range.'' A threatened species is any species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Per section 4(a)(1) of the Act, in reviewing the status of the species to determine if it meets the definition of ''an endangered species'' or of a ''threatened species,'' we determine whether any species is an endangered or threatened species because of any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence.

Until recently, the Service has presented its evaluation of information under the five listing factors in an

outline format, discussing all of the information relevant to any given factor and providing a factor-specific conclusion before moving to the next factor. However, the Act does not require findings under each of the factors, only an overall determination as to status (e.g., endangered species, threatened species, not warranted). Ongoing efforts to improve the efficiency and efficacy of the Service's implementation of the Act have led us to present this information in a different format that we believe leads to greater clarity in our understanding of the science, its uncertainties, and the application of our statutory framework to that science. Therefore, while the presentation of information in this rule differs from past practice, it differs in format only. We have evaluated the same body of information we would have evaluated under the five listing factors outline format, we are applying the same information standard, and we are applying the same statutory framework in reaching our conclusions.

Endangered or Threatened Species Throughout Its Range

Subsequent to our 2010 12-month finding, substantial new information has become available related to the genetics, range, and distribution of the Tucson shovel-nosed snake. On the basis of our biological review documented in the SSA Report, we have found merit in the recent genetic work presented in Wood *et al.* (2014, entire) and have revised our understanding of the range of the Tucson shovel-nosed snake based on this genetic information. As a result, the range of the Tucson shovel-nosed snake is considerably larger than the range we considered in our 2010 12-month finding. Therefore, in the associated SSA Report, we evaluated the various past, current, and future stressors known to negatively affect the Tucson shovel-nosed snake, but we expanded our analysis to include the entirety of the redefined range of the subspecies.

The primary past, current, and ongoing stressor to the Tucson shovel-nosed snake is habitat loss resulting from existing and potential future urban development. Secondary sources of habitat loss likely to affect the subspecies on a smaller-scale include solar energy development, road construction and maintenance, conversion of lands to agricultural use, wildfires, climate change, and drought. All of these stressors related to habitat loss are likely the most significant to the subspecies because they have the potential to remove Sonoran Desertscrub habitat that is necessary for individuals to complete their life history and for populations to maintain resiliency supported by sufficient intact tracts of habitat. Our analysis acknowledges that stressors resulting in habitat loss, including urban development, will continue to occur in portions of the Tucson shovel-nosed snake's range; however, we evaluated the scope and effect of these stressors throughout the subspecies' redefined range, and conclude that these stressors are limited to a small portion of the subspecies' range. Furthermore, a meaningful portion of the range of the Tucson shovel-nosed snake is, and will be, protected for the foreseeable future under existing specific management by the BLM that is focused on maintaining intact Sonoran Desertscrub habitat. As a result, we expect stressors resulting in habitat loss may diminish the resiliency of local snake populations in portions of the subspecies' range but will not reduce the subspecies' resiliency, redundancy, and representation throughout its range. We conclude that adequate suitable habitat for the Tucson shovel-nosed snake will be available for the foreseeable future.

Other potential stressors that we evaluated include overutilization for commercial and scientific purposes, disease, and predation. Unregulated take of Tucson shovel-nosed snakes is likely infrequent because specimens can be difficult to locate in the wild and are similar in appearance to venomous coral snakes, causing humans to be less likely to capture them. Disease has not been documented in Tucson shovel-nosed snakes, and, while predation by a variety of carnivores is known to occur, there is no information suggesting that predation occurs at higher levels than expected in a normally functioning ecosystem. Thus, these stressors are not reducing the subspecies' resiliency, redundancy, or representation and, therefore, are not reducing its viability.

Tucson shovel-nosed snakes are found throughout the entirety of their redefined range, and it does not appear that the various stressors described above are occurring at such a magnitude that they are diminishing the subspecies' resiliency, redundancy, and representation throughout its range. Furthermore, the genetic work by Wood *et al.* (2014, entire) indicate that there is substantial genetic variability within the Tucson shovel-nosed snake, and that there appears to be ongoing exchange of genetic material within Tucson shovel-nosed snake populations, as well as among the subspecies of the western shovel-nosed snake. We are not aware of any other potential stressors or threats that may impact the subspecies or its habitat individually or in combination, as further discussed in the SSA Report. Because the Tucson shovel-nosed snake is a habitat generalist and due to the distribution and extent of suitable habitat within the Tucson shovel-nosed snake's estimated range, the subspecies exhibits resiliency, redundancy, and representation such that it does not meet the definition of an endangered or threatened species. Therefore, we find that listing the Tucson shovel-nosed snake as an endangered or a threatened species throughout its range is not warranted.

Distinct Vertebrate Population Segment

Because we find that the Tucson shovel-nosed snake does not warrant listing as endangered or threatened throughout its range, we next consider whether there is an alternative characterization of the subspecies that may warrant listing under the Act as defined by policy or regulation. The Act provides for the consideration of listing of distinct vertebrate population segments (DPSs) as defined within section 3 of the Act. Under the Service's Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Endangered Species Act (DPS Policy; 61 FR 4722, February 7, 1996), three elements are considered in the decision concerning the establishment and classification of a possible DPS. These are applied similarly for addition to or removal from the Federal List of Endangered and Threatened Wildlife. These elements include:

(1) The discreteness of a population in relation to the remainder of the species to which it belongs;

(2) The significance of the population segment to the species to which it belongs; and

(3) The population segment's conservation status in relation to the Act's standards for listing, delisting, or reclassification (i.e., is the population segment endangered or threatened).

Discreteness

Under the DPS Policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either one of these conditions:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.

(2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist

that are significant in light of section 4(a)(1)(D) of the Act.

With regard to the Tucson shovel-nosed snake, our evaluation of the status of this subspecies, as outlined in the SSA Report, indicates that the snake does not meet the criteria for discreteness required by our DPS policy. The best available scientific information indicates that there are no physical, physiological, ecological, or behavioral factors within the range of the Tucson shovel-nosed snake that point to any segment of the population being discrete. Genetic work shows genetic diversity and evidence of genetic exchange across the range of the snake, indicating that populations within the range are interacting and are not discrete (Wood *et al.* 2008, entire; Wood *et al.* 2014, entire). Furthermore, the Tucson shovel-nosed snake is not delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act. Because there are no discrete population segments within the Tucson shovel-nosed snake, it is unnecessary for us to complete any further analysis under the DPS policy.

Significant Portion of the Range

Under the Act and our implementing regulations, a species may warrant listing if it is an endangered or a threatened species throughout all or a significant portion of its range. The Act defines ''endangered species'' as any species which is ''in danger of extinction throughout all or a significant portion of its range,'' and ''threatened species'' as any species which is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The term ''species'' includes ''any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature.'' We published a final policy interpreting the phrase ''significant portion of its range'' (SPR) (79 FR 37578, July 1, 2014). The final policy states that (1) if a species is found to be an endangered or a threatened species throughout a significant portion of its range, the entire species is listed as an endangered or a threatened species, respectively, and the Act's protections apply to all individuals of the species wherever found; (2) a portion of the range of a species is ''significant'' if the species is not currently an endangered or a threatened species throughout all of its range, but the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range; (3) the range of a species is considered to be the general geographical area within which that species can be found at the time the Service or the National Marine Fisheries Service makes any particular status determination; and (4) if a vertebrate species is an endangered or a threatened species throughout an SPR, and the population in that significant portion is a valid DPS, we will list the DPS rather than the entire taxonomic species or subspecies.

The SPR policy is applied to all status determinations, including analyses for the purposes of making listing, delisting, and reclassification determinations. The procedure for analyzing whether any portion is an SPR is similar, regardless of the type of status determination we are making. Where we have found that the species is neither an endangered nor a threatened species throughout all of its range, we next determine whether the species is an endangered or a threatened species throughout a significant portion of its range. If it is, we list the species as an endangered or a threatened species, respectively; if it is not, we conclude that listing the species is not warranted.

When we conduct an SPR analysis, we first identify any portions of the species' range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and either an endangered or a threatened species. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that (1) the portions may be significant and (2) the species may be in danger of extinction in those portions or likely to become so within the foreseeable future. Answering these questions in the affirmative is not a determination that the species is an endangered or a threatened species throughout a significant portion of its range—rather, it is a step in determining whether a more detailed analysis of the issue is required. A key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are affecting it uniformly throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the range that clearly do not meet the biologically based definition of ''significant'' (i.e., the loss of that portion clearly would not be expected to increase the vulnerability to extinction of the entire species), those portions will not warrant further consideration.

If we identify any portions that may be both (1) significant and (2) endangered or threatened, we engage in a more detailed analysis to determine whether these standards are indeed met. The identification of an SPR does not create a presumption, prejudgment, or other determination as to whether the species in that identified SPR is an endangered or a threatened species. We must go through a separate analysis to determine whether the species is an endangered or a threatened species in the SPR. To determine whether a species is an endangered or a threatened species throughout an SPR, we will use the same standards and methodology that we use to determine if a species is an endangered or a threatened species throughout its range.

Depending on the biology of the species, its range, and the threats it faces, it may be more efficient to address the ''significant'' question first, or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is an endangered or a threatened species there; if we determine that the species is not an endangered or a threatened species in a portion of its range, we do not need to determine if that portion is ''significant.''

We considered whether there are any significant portions of the range where the Tucson shovel-nosed snake is in danger of extinction or is likely to become endangered in the foreseeable future by reviewing the SSA Report with respect to the geographic concentration of threats, and the significance of portions of the range to the conservation of the subspecies. However, there were no portions of the subspecies' range that we considered biologically ''significant'' because the habitat conditions and distribution of the snake were generally similar across the entire subspecies' range and there is relatively high genetic diversity across the entire range. Therefore, we next chose to identify any portions of the Tucson shovel-nosed snake's range where the subspecies may be in danger of extinction or likely to become so within the foreseeable future. We concluded that the best available information indicates that the impacts identified in the SSA Report do not occur uniformly throughout the range of

the Tucson shovel-nosed snake. The most significant impact to the Tucson shovel-nosed snake is urban development and associated activities. The SSA Report describes that the majority of urban development has occurred and will likely continue to occur within the north-central and eastern portions of the Tucson shovel-nosed snake's range, primarily along the Interstate 10 corridor. Because urban development represents a permanent loss of Tucson shovel-nosed snake habitat, it is within these areas that the extent of the impact could be such that the Tucson shovel-nosed snake in this portion of the range may be in danger of extinction or is likely to become endangered in the foreseeable future. Having identified this portion of the range as potentially having endangered or threatened status, we must next determine if this portion of the range is significant. As described above, we would consider such a portion of the range significant if, should that portion of the range be theoretically extirpated, the species in the remaining portion of the range would be in danger of extinction now or in the foreseeable future (in other words, endangered or threatened). The best available information suggests that, should the Tucson shovel-nosed snake be extirpated from areas of urban development in the north-central and eastern portions of its range, the remainder of its range would retain adequate resiliency, redundancy, and representation. There are no significant stressors to the remainder of the range of the subspecies due, in large part, to the large areas of habitat that would remain protected into the foreseeable future. Therefore, we find that the Tucson shovel-nosed snake is not in danger of extinction now, or likely to become so in the foreseeable future, in a significant portion of its range.

Based on the information presented in the SSA Report for the Tucson shovel-nosed snake, and on the discussion above, we find that the best available scientific and commercial information does not indicate that the threats to the Tucson shovel-nosed snake rise to the level of significance such that this subspecies is in danger of extinction now or likely to become so in the foreseeable future throughout all or a significant portion of its range. As a result, we have determined that this subspecies does not meet the definition of an endangered or threatened species under the Act and are subsequently removing this subspecies from our candidate list.

References Cited

A complete list of references cited is available in the SSA Report (Service 2014, pp. 69–74), available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R2–ES–2014–0035, and upon request from the Arizona Ecological Services Field Office (see **ADDRESSES**).

Authors

The primary authors of this notice are the staff members of the Arizona Ecological Services Field Office.

Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 9, 2014.

Rowan W. Gould,

Acting Director, U. S. Fish and Wildlife Service.

[FR Doc. 2014–22331 Filed 9–22–14; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 79, No. 184

Tuesday, September 23, 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

September 17, 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Office of the Assistant Secretary for Civil Rights

Title: USDA Program Discrimination Complaint Form.

OMB Control Number: 0508–0002.

Summary of Collection: Under 7 CFR 15.6 ''any person who believes himself or any specific class of individuals to be subjected to discrimination . . . may by himself or by an authorized representative file a written complaint based on the ground of such discrimination.'' The collection of this information is the avenue by which the individual or his representative may file such a complaint. The requested information is necessary in order for the Office of Civil Rights to address the alleged discriminatory action.

Need and Use of the Information: The requested information which can be submitted by filling out the Program Discrimination Form or by submitting a letter, is necessary in order for the USDA Office of the Assistant Secretary for Civil Rights (OASCR) to address the alleged discriminatory action. The respondent is asked to provide his/her name, mailing address, property address (if different from mailing address), telephone number, email address (if any) and to provide a name and contact information for the respondent's representative (if any). A brief description of who was involved with the alleged discriminatory action, what occurred and when, is requested. The program discrimination complaint filing information, which is voluntarily provided by the respondent, will be used by the staff of USDA OASCR to investigate, attempt resolution and settle the case. If information regarding alleged discrimination is not collected from the individual who believes he/she has experienced discrimination in a USDA program, it would not be possible for the USDA to address and rectify the alleged discrimination.

Description of Respondents: Individuals or households; Business or other for-profit; and Not-for-profit institutions.

Number of Respondents: 1,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 1,000.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2014–22566 Filed 9–22–14; 8:45 am]

BILLING CODE 3410–9R–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 18, 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Food Safety Education Campaign Post-Wave Tracking Survey.

OMB Control Number: 0583–0150.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 et seq.), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, et seq.), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031). These statues mandate that FSIS protect the public by verifying that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and package. FSIS, in partnership with the AD Council, the Food and Drug Administration, and the Center for Disease Control, has developed a national public service advertising campaign to educate the public about the importance of safe food handling and how to reduce the risks associated with foodborne illness.

Need and Use of the Information: FSIS will collect information using this third wave of the study to help better understand current sentiment surrounding food safe behaviors. The collected information will also help gauge awareness of the advertising, attitudes regarding safe food preparation, and self-reported prevention behaviors.

Description of Respondents: Individuals or households.

Number of Respondents: 7,200.

Frequency of Responses: Reporting: Other (once).

Total Burden Hours: 500.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2014–22563 Filed 9–22–14; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 18, 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 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 20503. 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. Comments regarding these information collections are best assured of having their full effect if received by October 23, 2014. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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.

Grain Inspection, Packers & Stockyards Administration

Title: Report and Recordkeeping Requirements.

OMB Control Number: 0580–0013.

Summary of Collection: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is mandated to provide, upon request, inspection, certification, and identification services related to assessing the class, quality, quantity, and condition of agricultural products shipped or received in interstate and foreign commerce. Applicants requesting GIPSA services must specify the kind and level of service desired, the identification of the product, the location, the amount, and other pertinent information in order that official personnel can efficiently respond to their needs.

Need and Use of the Information: GIPSA employees use the information to guide them in the performance of their duties. Additionally, producers, elevator operators, and/or merchandisers who obtain official inspection, testing, and weighing services are required to keep records related to the grain or commodity for three years. Personnel who provide official inspection, testing, and weighing services are required to maintain records related to the lot of grain or related commodity for a period of five years. The information is used for the purpose of investigating suspected violations.

Description of Respondents: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 8,610.

Frequency of Responses: Recordkeeping; Reporting: On occasion, Weekly, Monthly, Semi-annually, and Annually.

Total Burden Hours: 161,614.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2014–22564 Filed 9–22–14; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 18, 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 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.

Comments regarding these information collections are best assured of having their full effect if received by October 23, 2014. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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.

Rural Housing Service

Title: 7 CFR 1951–E, Servicing of Community and Direct Business Programs Loans and Grants.

OMB Control Number: 0575–0066.

Summary of Collection: Rural Development (Agency) is the credit agency for agriculture and rural development for the U.S. Department of Agriculture. The Community Facilities program is authorized to make loans and grants for the development of essential community facilities primarily serving rural residents. The Direct Business and Industry Program is authorized to make loans to improve, develop, or finance business, industry, and employment, and improve the economic and environmental climate in rural communities. Section 331 and 335 of the Consolidated Farm and Rural Development Act, as amended, authorizes the Secretary of Agriculture, acting through the Agency, to establish provisions for security servicing policies for the loans and grants in questions. If there is a problem which exists, a recipient of the loan, grant, or loan guarantee must furnish financial information which is used to aid in resolving the problem through reamortization, sale, transfer, debt restructuring, liquidation, or other means provided in the regulations.

Need and Use of the Information: The Agency will use several different forms to collect information from applicants, borrowers, consultants, lenders and attorneys. This information is used to determine applicant/borrower eligibility and project feasibility for various servicing actions. The information enables field staff to ensure that borrowers operate on a sound basis and use loan and grant funds for authorized purposes.

Description of Respondents: State, Local or Tribal Government; Not-for-profit institutions.

Number of Respondents: 132.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,143.

Rural Housing Service

Title: RD 3550–28, ''Authorization Agreement for Preauthorization Payments''; RD 1951–65, ''Customer Initiated Payments (CIP)'' and RD 1951–66, ''Fedwire Worksheet''.

OMB Control Number: 0575–0184.

Summary of Collection: Rural Development (RD) uses electronic methods for receiving and processing loan payments and collections. These electronic collection methods are approved by Treasury and include Preauthorized Debits (PAD), Customer Initiated Payments (CIP), and FedWire. These electronic collection methods provide the borrower the ability to submit their loan payments the day prior to, or the day of their installment due date. To administer these electronic payment methods, RD will use approved agency forms for collecting financial institution routing information. Form RD 3550–28, Authorization Agreement for Preauthorized Payments, is prepared by the borrower to authorized RD to electronically collect regular loan payments from a borrower's account at a financial institution (FI) as preauthorized debits. Form RD 1951–65, is prepared by the borrower to enroll in CIP. CIP is an electronic collection method that enables borrowers to input payment data to a contract bank via telephone (touch tone and voice) or computer terminal. Form RD 1951–66, FedWire Worksheet, is completed by the borrower to establish an electronic FedWire format with their FI.

Need and Use of the Information: RD will request that borrowers make payments electronically via PAD, CIP, or FedWire. The information is collected only once unless the FI routing information changes. If the information were not collected, RD would be unable to collect loan payments electronically.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 6,314.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 3,259.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2014–22562 Filed 9–22–14; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability: Multi-Family Housing Preservation and Revitalization Demonstration Program—Section 514, Section 515, and Section 516 for Fiscal Year 2014

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: USDA Rural Development, which administers the programs of the Rural Housing Service (Agency), announces the availability of $20 million in budget authority and the timeframe to submit applications to participate in a demonstration program to preserve and revitalize existing Rural Rental Housing (RRH) projects under Section 515, Section 514, and Section 516 of the Housing Act of 1949, as amended. Under the demonstration program, existing Section 515 Multi-Family Housing (MFH) loans and Sections 514/516 Off-Farm Labor Housing (FLH) loans will be restructured to ensure that sufficient resources are available to preserve the ability of rental projects to provide safe and affordable housing for very low-, low-, or moderate-income residents. Projects participating in this program will be expected to be revitalized to extend their affordable use without displacing tenants because of increased rents. No additional Agency Rental Assistance (RA) units will be made available under this program.

DATES: Pre-applications in response to this Notice will be accepted until November 24, 2014, 5:00 p.m., Eastern Time. The pre-application closing deadline is firm as to date and hour. The Agency will not consider any pre-application that is received after the closing deadline. Applicants intending to mail pre-applications must allow sufficient time to permit delivery on or before the closing deadline. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX) and postage-due pre-applications will not be accepted.

ADDRESSES: All hard copy pre-applications and additional materials must be mailed to the attention of Sherry Engel or Tiffany Tietz, Finance and Loan Analyst, Multi-Family Housing Preservation and Direct Loan Division, STOP 0782, (Room 1263–S), U.S. Department of Agriculture, Rural Development, 1400 Independence Avenue SW., Washington, DC 20250–0782.

Assistance for filing electronic and hard copy pre-applications can be

obtained from any Rural Development State Office. USDA Rural Development MFH State Office Contacts can be found at *http://www.rurdev.usda.gov/StateOfficeAddresses.html.*

(**Note:** Telephone numbers listed are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Sherry Engel or Tiffany Tietz, *sherry.engel@wdc.usda.gov* or *tiffany.tietz@wdc.usda.gov,* (715) 345–7677 or (616) 942–4111, extension 126, Finance and Loan Analyst, Multi-Family Housing Preservation and Direct Loan Division, STOP 0782, (Room 1263–S) U.S. Department of Agriculture, Rural Development, 1400 Independence Avenue SW., Washington, DC 20250–0782. *(Please note these telephone numbers are not toll-free numbers.)*

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this Notice have received approval from the Office of Management and Budget (OMB) under Control Number 0570–0190.

Overview Information

Federal Agency Name: Rural Housing Service, USDA.

Funding Opportunity Title: Multi-Family Housing Preservation and Revitalization Demonstration Program—Section 514, Section 515, and Section 516 for Fiscal Year 2014.

Announcement Type: Inviting applications from eligible applicants for Fiscal Year 2014, Funding.

Catalog of Federal Domestic Assistance Number (CFDA): 10.447.

Dates: Pre-applications in response to this Notice will be accepted until November 24, 2014, 5:00 p.m., Eastern Time. The pre-application closing deadline is firm as to date and hour. The Agency will not consider any pre-application that is received after the closing deadline. Applicants intending to mail pre-applications must allow sufficient time to permit delivery on or before the closing deadline. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX) and postage-due pre-applications will not be accepted.

I. Funding Opportunities Description

The Consolidated Appropriations Act, 2014, Public Law 113–76 (January 17, 2014) authorized the Agency to conduct a demonstration program for the preservation and revitalization of the Section 515 MFH portfolio and Sections 514/516 Off-FLH portfolio. Section 514, Section 515 and Section 516 MFH programs are authorized by the Housing Act of 1949, as amended (42 U.S.C. 1484, 1485, 1486) and provide Rural Development with the authority to provide financial assistance for low-income MFH and FLH and related facilities as defined in 7 CFR Part 3560.

A synopsis of this program and the pre-application's universal resource locator (URL) will be listed by Catalog of Federal Domestic Assistance Number or at Federal GrantsWire at *http://www.federalgrantswire.com.*

This Notice solicits pre-applications from eligible borrowers/applicants to restructure existing MFH projects already participating in the Agency's Section 515 MFH portfolio and Sections 514/516 FLH portfolio for the purpose of revitalization and preservation. Eligible borrowers are sometimes referred to in this Notice as ''applicants,'' ''borrowers,'' ''applicant/borrowers,'' or ''owners'' as seems most appropriate for the context of the relevant Notice provision. The demonstration program shall be referred to in this Notice as the Multi-Family Housing Preservation and Revitalization Demonstration (MPR) Program. Agency regulations for the Section 515 MFH program and the Sections 514/516 FLH program are published at 7 CFR Part 3560.

The intent of the MPR is to ensure that existing rental projects will continue to deliver decent, safe and sanitary affordable rental housing for 20 years, the remaining term of any Agency loan, or the remaining term of any existing Restrictive-Use Provisions (RUP) or prohibition, whichever ends later. Applications will be selected by the Agency by the process described in this Notice, and the selected applicants will be invited to participate in the MPR demonstration program. Upon written notification to the Agency from the selected applicant of their acceptance to participate, an independent third-party Capital Needs Assessment (CNA) will be conducted to provide a fair and objective review of projected capital needs. The Agency shall implement any restructuring proposal that may be offered under this Notice through an MPR Conditional Commitment (MPRCC) with the eligible borrower/applicant, which will include all the terms and conditions offered by the Agency.

One of the restructuring tools to be used in this program is debt deferral for up to 20 years of the existing Section 514 or Section 515 loans obligated prior to October 1, 1991. The cash flow from the deferred payment will be deposited, as directed by the Agency, to the reserve account to help meet the future physical needs of the project or to reduce rents.

Debt deferral is described as follows:

MPR Debt Deferral: A deferral of the existing Section 514 or Section 515 Agency loan(s), obligated on or before October 1, 1991, for the lesser of either the remaining term of the existing Section 514 or Section 515 loan, or 20 years. All terms and conditions of the deferral will be described in the MPR Debt Deferral Agreement. A balloon payment of principal and accrued interest will be due at the end of the deferral period. Interest will accrue at the promissory note rate and, if applicable, the subsidy will be applied as set out in the Agency's Interest Credit and Rental Assistance Agreement.

Other Agency MPR tools are as follows:

1. MPR Grant: A grant limited to non-profit applicants/borrowers only. The grant will be limited to the cost of correcting health and safety violations of a project identified by a CNA accepted by the Agency. The grant administration will be in accordance with applicable provisions of 7 CFR parts 3015 and 3019.

2. MPR Zero Percent Loan: A loan at zero percent interest. The loan's maximum term and maximum amortization will be as authorized by the respective program authority.

(a) For Section 515 RRH projects, the maximum term will be 30 years, and will be amortized over a maximum term of 50 years.

(b) For Sections 514/516 projects, the loan will be amortized over a maximum term of 33 years.

3. MPR Soft-Second Loan: A loan with a one percent interest rate that will have its accrued interest and principal deferred to a balloon payment. The balloon payment will be due at the same time the latest maturing Section 514 or Section 515 loan already in place at the time of closing, or the maturity date of any current loan being re-amortized as part of the restructuring, is due.

MPR funds cannot be used to build community rooms, add additional parking areas, playgrounds, laundry rooms or additional new units, unless the additional unit(s) are needed for the project to meet the 5 percent fully accessible requirement as defined by the Uniform Federal Accessibility Standards (UFAS), and the Agency concurs. However, other funding sources as outlined below in (i) through (vi) can be used either for such revitalization and/or improvements:

i. Rural Development Section 515 Rehabilitation loan funds;

ii. Rural Development Sections 514/516 Off-Farm rehabilitation loan/grant funds;

iii. Rural Development Section 538 Guaranteed RRH program financing;

iv. Rural Development Multi-Family Housing Preservation Revolving Loan Program funds;

v. Third-party loans, grants, tax credits and tax-exempt financing; and

vi. Owner-provided capital contributions in the form of a cash infusion. A cash infusion cannot be a loan.

Transfers, subordinations, and consolidations may be approved as part of a MPR transaction in accordance with 7 CFR Part 3560. *If a transfer is part of the MPR transaction, and the transfer includes a seller payment and/or increase in the allowable Return to Owner, the transfer must first be underwritten to meet the requirements of 7 CFR 3560.406. The transfer underwriting may assume the deferral of all eligible Section 515 loans.* After the transfer has been underwritten and concurred with by the Multi-Family Housing Preservation and Revitalization Demonstration (MPR) program, the MPR transaction may be underwritten.

For the purposes of the MPR, the restructuring transactions will be identified in three categories:

1. Simple transactions, which involve no change in ownership.

2. Complex transactions, which may consist of a project transfer to a new ownership, processed in accordance with 7 CFR 3560.406, with or without a consolidation, or transactions requiring a subordination agreement as a result of third-party funds. The applicant will submit one pre-application form. If a consolidation is proposed, all projects to be consolidated must be submitted on one pre-application form and be located in the same market area.

To be considered in the same market area, projects must be: in a neighborhood or similar area where the property competes for tenants; managed under one management plan and one management agreement; and, in sufficiently close proximity to permit convenient and efficient management of the property.

Applicants should discuss proposed consolidations with the Rural Development State Office in the State where the projects are located prior to filing their MPR pre-application to ensure Rural Development concurs with the application's market area estimation.

If either the Agency or the owner chooses to remove one or more projects from the proposal, this may be done without affecting the eligibility of the complex transaction. To be a complex transaction, the Agency assumes only one project remains at the MPR closing.

3. Portfolio transactions includes two or more projects with one stay-in owner, or two or more projects with multiple project sale transactions to a common purchaser all located in one State: a stay-in-owner is defined as an existing Section 515 or Sections 514/516 borrower who owns two or more properties either as a single ownership entity or as separate legal entities with at least one common general partner. Each project included in the transaction will be submitted on a separate pre-application form unless some projects are located in the same market area, as defined above, and are being consolidated. Any projects in the portfolio proposed to be consolidated will be listed on the same pre-application form. Each pre-application must have the same portfolio name. If the owner chooses to remove one or more projects from the proposal, at least two projects must remain in order to be classified as a portfolio transaction. At the end of the transaction, the Agency assumes there will be two or more projects. The stay-in owner or common purchaser must have at least one general partner in common.

A transaction within each category may utilize any or all restructuring tools. Restructuring tools available through the MPR program will be used to address preservation and rehabilitation items identified in the Agency-accepted CNA.

Liens against the project, with the exception of Agency-deferred debt, cannot exceed the Agency-approved security value of the project. All Agency debt, either in first lien position or a subordinated lien position, must be secured by the project, except deferred debt, which is not included in the Agency's total lien position for computation of the Agency's security value. Payment of any deferred debt will not be required from normal project operations income, but from excess cash from project operations after all other secured debts are satisfied or as directed by the Agency.

The general steps of the MPR application process are as follows:

1. *Pre-application:* Applicants must submit a pre-application as described in Section VI below. This pre-application process is designed to lessen the cost burden on all applicants, including those who may not be eligible or whose proposals may not be feasible.

Note: *If you receive a loan or grant award under this Notice, USDA reserves the right to post all information submitted as part of the pre-application/application package, which is not protected under the Privacy Act, on a public Web site with free and open access to any member of the public.*

2. Eligible Projects: Using criteria described below in Section III, the Agency will conduct an initial screening for eligibility. As described in Section VIII below, the Agency will conduct an additional eligibility screening later in the selection process.

3. Scoring and Ranking: All complete, eligible and timely-filed pre-applications will be scored, ranked and put in potential funding categories as discussed in Sections VI and VII below.

4. Formal Applications: Top ranked pre-applicants will receive a letter from the Agency inviting them to submit a formal application. As discussed in Section VIII paragraph (2) of this Notice, the Agency will require the owner to provide a CNA completed in accordance with the Agency's published guidance (available at *http://www.rurdev.usda.gov/HMF_MPR.html*) to underwrite the proposal to determine financial feasibility. Applicants will be informed of any proposals that are determined to be ineligible or financially infeasible. Any proposal denied by the Agency will be returned to the applicant, and the applicant will be given appeal rights pursuant to 7 CFR part 11.

5. Financial Feasibility: The Agency will use the results of the CNA to help identify the need for resources and applicant provided information regarding anticipated or available third-party financing, in order to determine the financial feasibility of each potential transaction, using restructuring tools available either through existing regulatory authorities or specifically authorized through this demonstration program. A project is financially feasible when it can provide affordable, decent, safe, and sanitary housing for 20 years or the remaining term of any Agency loan, whichever ends later, by using the authorities of this program while minimizing the cost to the Agency, and without increasing rents for eligible tenants or farm laborers, except when necessary to meet normal and necessary operating expenses. If the transaction is determined financially feasible by the Agency, the borrower will be offered a restructuring proposal, subject to available funding. This will include a requirement that the borrower execute, for recordation, an Agency-approved restrictive-use covenant for a period of 20 years, the remaining term of any loans, or the remaining term of any existing restrictive-use provisions, whichever ends later. The restructuring proposal will be established in the MPRCC.

6. MPR Agreements: If the offer is accepted by the applicant, the applicant must sign and return the MPRCC. By accepting the offer, the applicant agrees to the terms of the MPRCC. Any third-party lender will be required to subordinate to the Agency's restrictive-use covenant unless the Agency determines, on a case-by-case basis, that the lender's refusal to subordinate will not compromise the purpose of the MPR.

7. General Requirements: The MPR transactions may be conducted with a stay-in owner (simple) or may involve a change in ownership (complex or portfolio). Any housing or related facilities that are constructed or repaired must meet the Agency design and construction standards and the development standards contained in 7 CFR part 1924, subparts A and C, respectively. Once constructed, Section 515 MFH and Sections 514/516 FLH projects must be managed in accordance with 7 CFR part 3560. Tenant eligibility will be limited to persons who qualify as an eligible household under Agency regulations. Tenant eligibility requirements are contained in 7 CFR 3560.152.

II. Award Information

The Consolidated Appropriations Act, 2014, Public Law 113–76 (January 17, 2014), appropriated $20 million in budget authority to operate the MPR demonstration program. The budget authority is anticipated to make approximately $37.8 million available in program funds depending on the funding tools used. This funding remains available until expended.

All Agency funding of applications selected under this Notice must be approved no later than September 30, 2016. Any pre-applications selected under this Notice, not approved by the Agency prior to September 30, 2016, will be considered withdrawn automatically, however, the applicants may reapply for funding under future Notices.

Applicants are alerted that the Agency has unfunded applications carried over from prior Notices that will receive priority based on those Notices. If funds available for the MPR are fully committed before all eligible pre-applications selected for further processing under this Notice, or prior Notices, are funded, the Agency shall suspend further processing of the pre-applications at that time.

III. Eligibility Information

Applicants (and the principals associated with each applicant) must meet the following requirements:

1. All applicants must meet the eligibility requirements included in 7 CFR 3560.55 and 3560.555. This Notice will require the selected applicants to make the required equity contribution as outlined in 3560.63(c). Loan applicants will not be given consideration for any increased equity value the property may have since the initial loan. Eligibility also includes the continued ability of the borrower/applicant to provide acceptable management and will include an evaluation of any current outstanding deficiencies. Any outstanding violations, recorded in the Agency's Automated MFH Information System (MFIS), will preclude further processing of any MPR applications associated with the borrower or Identity of Interest (IOI) management agent unless there is a current, approved workout plan in place and the plan has been satisfactorily followed for a minimum of 6 consecutive months, as determined by the Agency.

2. For Section 515 RRH projects, the average physical vacancy rate for the 12 months preceding the NOFA publication date can be no more than 10 percent for projects consisting of 16 or more revenue units and no more than 15 percent for projects less than 16 revenue units unless an exception applies under Section VI paragraph (1)(iii) of this Notice. If a project consolidation is involved, the consolidation will remain eligible so long as the average vacancy rate for each individual project meets the occupancy standard noted in this paragraph. Projects that do not meet the occupancy threshold at the time of filing the application may be withdrawn by the owner or the Agency without jeopardizing the application.

3. For Sections 514/516 FLH projects, rather than an average physical vacancy rate as noted in III(2) above, a positive cash flow for the previous full 3 years of operation is required unless an exception applies under Section VI paragraph (1)(iii) of this Notice.

4. Ownership of and ability to operate the project after the transaction is completed. In the event of a transfer, the proposed transferee must submit an executed purchase agreement or other evidence of site control in the name of the individual or entity proposing to purchase the property.

5. An Agency-approved CNA (for guidance refer to *http://www.rurdev.usda.gov/HMF_MPR.html*) and an Agency financial evaluation must be conducted to ensure that utilization of the restructuring tools of the MPR program is financially feasible and necessary for the revitalization and preservation of the project for affordable housing. Initial eligibility for processing will be determined as of the date of the pre-application filing deadline. The Agency reserves the right to discontinue processing any application due to material changes in the applicant's status occurring at any time after the initial eligibility determination.

6. Please note that all grant-eligible applicants must obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and register in the Central Contractor Registration (CCR) prior to submitting a pre-application pursuant to 2 CFR 25.200(b). In addition, an entity applicant must maintain registration in the CCR database at all times during which it has an active Federal award or an application or plan under consideration by the Agency. Similarly, all recipients of Federal Financial Assistance are required to report information about first-tier sub-awards and executive compensation, in accordance with 2 CFR part 170. So long as an entity applicant does not have an exception under 2 CFR 170.110(b), the applicant must have the necessary processes and systems in place to comply with the reporting requirements should the applicant receive funding. See 2 CFR 170.200(b).

IV. Equal Opportunity and Nondiscrimination Requirements

USDA is an equal opportunity provider, employer, and lender.

1. Borrowers and applicants will comply with the provisions of 7 CFR 3560.2.

2. All housing must meet the accessibility requirements found at 7 CFR 3560.60(d).

3. All MPR participants must submit or have on file a valid Form RD 400–1, ''*Equal Opportunity Agreement*'' and Form RD 400–4, ''*Assurance Agreement.*''

The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities).

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program

Discrimination Complaint Form (PDF), found online at *http://www.ascr.usda.gov/complaint_filing_cust.html,* or at any USDA office, or call (866) 632–9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410, by fax (202) 690–7442 or email at *program.intake@usda.gov.*

Individuals who are deaf, hard of hearing or have speech disabilities and who wish to file either an EEO or program complaint may contact USDA through the Federal Relay Service at (800) 877–8339 or (800) 845–6136 (in Spanish). Persons with disabilities who wish to file a program complaint, please see information above on how to contact us by mail directly or by email. If you require alternative means of communication for program information (e.g., Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

V. Authorities Available for MPR

MPR tools will be used in accordance with 7 CFR part 3560. The program will be administered within the resources available to the Agency through Public Law 113–76 and any future appropriations for the preservation and revitalization of Sections 514/516 and Section 515-financed projects. In the event that any provisions of 7 CFR part 3560 conflict with this demonstration program, the provisions of the MPR will take precedence.

VI. Application and Submission Information

1. The application submission and scoring process will be completed in two phases in order to avoid unnecessary effort and expense on the part of applicants.

Phase I—The first phase is the pre-application process. The applicant must submit a complete pre-application by the deadline listed under the ''DATES'' section of this Notice. The applicant's submission will be classified as ''complete'' when the MPR pre-application form is received in the correct format and place as described in this Notice for each MPR proposal the applicant wishes to be considered in the demonstration program. In the event the MPR proposal involves a project consolidation, it will be completed in accordance with 7 CFR 3560.410. One pre-application for the proposed consolidated project is required and must identify each project included in the consolidation. If the MPR proposal involves a portfolio transaction (sale or stay-in owner), one pre-application for each project in the portfolio is required and each pre-application must identify each project included in the portfolio transaction. In order for the pre-application to be considered complete, all applicable information requested on the MPR pre-application form must be provided. Additional information that must be provided with the pre-application to be considered complete, when applicable, includes:

i. For all transfers of ownership, a copy of a signed purchase agreement in the name of the purchasing entity must be provided.

ii. A copy of a signed statement by all partners, agreeing to participate in the program.

iii. Current market data (defined as no more than 6 months old at time of filing) for any project not meeting the occupancy standards cited in Section III (2) and (3) above. The market data must demonstrate there is *market demand* for the project evidenced by waiting lists and a housing shortage confirmed by local housing agencies and realtors, as determined by the Agency. The market data must show a clear need and demand for the project once a restructuring transaction is completed. The results of the survey of existing or proposed rental or labor housing, including complex name, location, number of units, bedroom mix, family or elderly type, year built, and rent charges must be provided, as well as the existing vacancy rate of all available rental units in the community, their waiting lists and amenities, and the availability of RA or other subsidies. The Agency will determine whether or not the proposal has market feasibility based on the data provided by the applicant. Any costs associated with the completion of the market data is NOT an eligible program project expense.

Unless an exception under this section applies, the requirements stated in Section III, paragraph (2) and (3) of this Notice must be met.

Note: *All documents must be received on or before the pre-application closing deadline to be considered complete and timely filed. Pre-applications that do not include a Purchase Agreement for transfer proposals or current market data for projects that do not meet the occupancy standards of Section III paragraphs (2) and (3) of this Notice, will be considered incomplete and will be returned to the applicant with appeal rights.*

Phase II—The second phase of the application process will be completed by the Agency based on Agency records and the pre-application information submitted. All complete, eligible, and timely-filed pre-applications will be scored and ranked based on points received during this two-phase application process. Further, the Agency will categorize each MPR proposal as being a Simple, Complex, or Portfolio transactions based on the information submitted on the pre-application, in accordance with the category descriptions provided in Section I of this Notice.

2. Pre-applications can be submitted either electronically or in hard copy. The Agency will record pre-applications received electronically by the actual date and time received in the MPR Web site mail box. This date may impact ranking of the application as discussed under section VII. For all hard copy pre-applications received, the recorded receipt time will be the close of business time for the day received, for the location to which the pre-applications are sent. Assistance for filing electronic and hard copy pre-applications can be obtained from any Rural Development State Office. A listing of State Offices, their addresses, telephone numbers and person to contact is included under the **ADDRESSES** of this Notice.

The pre-application is an Adobe Acrobat format and may be completed as a fillable form. The form contains a button labeled ''Submit by Email.'' Clicking on the button will result in an email containing a completed pre-application being sent to the MPR Web site mail box for consideration. If a purchase agreement or market survey is required, these additional documents are to be attached to the resulting email prior to submission.

Pre-application forms may be downloaded from the Agency's Web site at *http://www.rurdev.usda.gov/HMF_MPR.html* or obtained by contacting the State Office in the State the project is located.

VII. Selection for Processing

A. Pre-application ranking points will be based on information provided during the submission process and in Agency records. Only timely, complete pre-applications will be ranked. Points will be awarded as follows:

1. Contribution of other sources of funds. Other funds are those discussed in items (i) through (vi) of Section I of this Notice. Points will be awarded based on documented written evidence that the funds are *committed,* as determined by the Agency. The maximum points awarded for this criterion is 25 points. These points will be awarded in the following manner:

i. Evidence of a commitment of at least $3,000 to $5,000 per unit per

project from other sources—15 points, or

ii. Evidence of a commitment greater than $5,000 per unit per project from other sources—25 points.

2. Owner contribution. Points will be awarded if the owner agrees to make a contribution of at least $10,000 per project to pay transaction costs. (These funds cannot be from the project's reserve, operating funds, tax credit equity or be in the form of donated services provided by the applicant.) Transaction costs are defined as those Agency-approved costs required to complete the transaction under this Notice and include, but are not limited to the CNA, legal and closing costs, appraisal costs and filing/recording fees. This contribution must be deposited into the respective project reserve account prior to closing the MPR transaction from the owner's non-project resources. 20 points.

3. Owner contribution for the hard costs of construction. (These funds cannot be from the project's reserve account or project's general operating account or in the form of a loan.) Hard costs of construction are defined as those costs for materials, equipment, property or machinery required to complete the proposal under this Notice. Hard costs must be itemized on Form RD 1924–13, ''*Estimate and Certificate of Actual Cost''.* Form RD 1924–13 can be found at: *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD1924-13.PDF.*

The minimum contribution required to receive these points is $1,000 per unit per project, which will be required to be deposited in the project reserve account or supervised/construction account, as directed by Rural Development, prior to closing. An increased Return to Owner (RTO) may be budgeted and allowed for funds committed in accordance with 7 CFR 3560.406(d)(14)(ii). 10 points.

4. Special Initiatives and Memorandum of Understanding—Points may be awarded to applications received from any State where there is a recognized, State-funded program to be used for preservation and rehabilitation of existing Section 514 or Section 515 housing. To be eligible for these points, the State funds must be provided in the form of a grant and must be for a minimum of 30 percent of the total development cost. State funds do not need to be committed at the time of the application, however, if selected to proceed, the applicant must provide a written commitment of the funds from the State Agency within 45 days of selection. Failure to provide this information may result in the Agency withdrawing the pre-application. 15 points.

5. Age of project. For a project consolidation (including portfolio transactions) proposal, the project with the earliest operational date (operational date is the date the project initially placed in service and documented in the Agency's Multi-Family Housing Information System (MFIS)) will be used in determining the age of the project. Since the age of the project and the date the project placed in service are directly related to physical needs, a maximum of 30 points will be awarded based on the following criteria:

i. Projects with initial operational dates prior to December 21, 1979—30 points.

ii. Projects with initial operational dates on or after December 21, 1979, but before December 15, 1989—20 points.

iii. Projects with initial operational dates on or after December 15, 1989, but before October 1, 1991—10 points.

iv. Projects with initial operational dates on or after October 1, 1991—0 points.

6. Projects with open physical findings. The Agency may award up to 25 points to pre-applications involving projects that have been adversely impacted by an act of nature or where physical and/or financial deterioration or management deficiencies exist. Projects with Open Physical Findings classified ''B'', ''C'' or ''D'', as defined below, will be awarded in the following manner:

i. CLASS ''D'' PROJECTS

Class ''D'' projects are those projects that are in default and may be taken into inventory, be lost to the program, or cause the displacement of tenants. Defaults can be monetary or non-monetary. Projects in non-monetary default are those where the Agency has notified the borrower of a violation using the Agency's servicing letter process, and the borrower has not addressed the violation to the Agency's satisfaction.

ii. CLASS ''C'' PROJECTS

Class ''C'' projects are projects with open physical findings or violations, which are not associated to a workout plan and/or transition plan. This can *include* projects with violations where a servicing letter has been issued but 60 days have not passed since the issuance of the first servicing letter.

iii. CLASS ''B'' PROJECTS

Class ''B'' projects indicate the Agency has taken servicing steps and the borrower is cooperating to resolve identified findings or violations by associating a workout plan and/or transition plan.

(a) For transfer proposals:

1. For projects classified as a ''C'' or ''D'' for 24 months or more—20 points.

2. For projects classified as a ''C'' or ''D'' for less than 24 months—15 points.

(b) Stay-in owner proposals:

1. For projects classified as a ''B'' as a result of a workout plan and/or transition plan approved by the Agency prior to January 1, 2014—25 points.

2. Projects with an Agency ''C'' classification for 12 months or longer with open physical findings at the time the MPR pre-application is filed, will not be eligible to participate in the MPR.

7. Proposed or Closed Sale of Section 515 projects to Non-Profit/Public Housing Authority. The Agency will award 20 points for projects that have been sold to non-profit organizations under the prepayment process as explained in 7 CFR part 3560, Subpart N. To receive points, the borrower/applicant must provide a copy of the purchase agreement and filed deed (if sale is already closed to an eligible non-profit or public body)—20 points.

8. Prior approved CNAs. In the interest of ensuring timely application processing and underwriting, the Agency will award up to 20 points for projects with CNAs already approved by the Agency. ''Approved'' means the date the CNA or an updated CNA was previously reviewed and approved by the Agency. CNAs or updates before October 1, 2012, may not be used for MPR underwriting without an update approved by the Agency. Points will be awarded for:

i. CNAs approved on or after October 1, 2013, but prior to the publication of this Notice—20 points.

ii. CNAs approved on or after October 1, 2012, but prior to October 1, 2013—10 points.

9. Tenant service provision. The Agency will award 5 points for applications that include new services provided by either a for-profit or a non-profit organization, which may include a faith-based organization, or by another Government agency. Such services shall be provided at no cost to the project and shall be made available to all tenants. Examples of such services may include transportation for the elderly, after-school day care services or after-school tutoring.

10. For portfolio sales and project consolidations, the Agency will award the following points: Proposal does not involve a consolidation of properties (0 points); proposal involves a consolidation of 2–4 properties (5 points); proposal involves a

consolidation of 5 or more properties (10 points).

11. Energy Conservation, Energy Generation, and Green Property Management. Under the MPR Energy Initiatives, projects may receive a maximum of 42 points under three categories: Energy Conservation, Energy Generation, and Green Property Management.

i. Energy Conservation—30 points

Pre-applications for rehabilitation and preservation of projects may be eligible to receive a maximum of 30 points for the following energy conservation measures.

(a) Participation in the Green Communities program by the Enterprise Community Partners, *http://www.enterprisecommunity.com/solutions-and-innovation/enterprise* green-communities, or an equivalent Agency-approved program will be awarded 30 points for any project that qualifies for the program. At least 30 percent of the points needed to qualify for the Green Communities program must be earned under the Energy Efficiency section of the Green Communities qualification program. Green Communities has an initial checklist indicating prerequisites for participation. Each applicant must provide a checklist establishing that the prerequisites for each program's participation will be met. All checklists must be accompanied by a signed affidavit by the project architect or engineer stating that the goals are achievable.

(b) If you are not enrolling in the Green Communities program, then points can be accumulated for each of the following items up to a total of 20 points. Provide documentation to substantiate your answers below:

1. This proposal includes the replacement of heating, ventilation, and air conditioning (HVAC) equipment with Energy Star qualified heating, ventilation, and air conditioning equipment. 3 points.

2. This proposal includes the replacement of windows and doors with Energy Star qualified windows and doors. 3 points.

3. This proposal includes additional attic and wall insulation that exceeds the required R-Value of these building elements for your areas as per the International Energy Conservation Code 2012. Two points will be awarded if all exterior walls exceed insulation code, and 1 point will be awarded if attic insulation exceeds code for a maximum of 3 points.

4. This proposal includes the reduction in building shell air leakage by at least 15 percent as determined by pre- and post-rehab blower door testing on a sample of units. Building shell air leakage may be reduced through materials such as caulk, spray foam, gaskets and house-wrap. Sealing of duct work with mastic, foil-backed tape, or aerosolized duct sealants can also help reduce air leakage. 3 points.

5. This proposal includes 100 percent of installed appliances and exhaust fans that are Energy Star qualified. 2 points.

6. This proposal includes 100 percent of installed water heaters that are Energy Star qualified. 2 points.

7. This proposal includes replacement of 100 percent of toilets with flush capacity of more than 1.6 gallon flush capacity with new toilets having 1.6 gallon flush capacity or less, and with Environment Protection Agency (EPA) Water Sense label. 1 point.

8. This proposal includes 100 percent of new showerheads with EPA Water Sense label. 1 point.

9. This proposal includes 100 percent of new faucets with EPA Water Sense label. 1 point.

10. This proposal includes 100 percent energy-efficient lighting including Energy Star qualified fixtures, compact fluorescent replacement bulbs in standard incandescent fixtures and Energy Star ceiling fans. 1 point.

and

(c) Participation in local green/energy efficient building standards. Applicants who participate in a city, county, or municipality program will receive an additional 2 points. The applicant should be aware and look for additional requirements that are sometimes embedded in the third-party program's rating and verification systems. 2 points.

ii. Energy Generation (Maximum 5 Points)

Pre-applications which participate in the Green Communities program by the Enterprise Community Partners or an equivalent Agency-approved program or receive at least 20 points for Energy Conservation measures are eligible to earn additional points for installation of on-site renewable energy sources. Renewable, on-site energy generation will complement a weather-tight, well-insulated building envelope with highly efficient mechanical systems. Possible renewable energy generation technologies include, but are not limited to: wind turbines and micro-turbines, micro-hydro power, photovoltaic (capable of producing a voltage when exposed to radiant energy, especially light), solar hot water systems and biomass/biofuel systems that do not use fossil fuels in production. Geo-exchange systems are highly encouraged as they lessen the total demand for energy and, if supplemented with other renewable energy sources, can achieve zero energy consumption more easily.

Points under this paragraph will be awarded as follows. Projects with preliminary or rehabilitation building plans and energy analysis that propose a 10 percent to 100 percent energy generation commitment (where generation is considered to be the total amount of energy needed to be generated on-site to make the building a net-zero consumer of energy) may be awarded points corresponding to their percent of commitment as follows:

(a) 0 to 9 percent commitment to energy generation receives 0 points;

(b) 10 to 20 percent commitment to energy generation receives 1 point;

(c) 21 to 40 percent commitment to energy generation receives 2 points;

(d) 41 to 60 percent commitment to energy generation receives 3 points;

(e) 61 to 80 percent commitment to energy generation receives 4 points; or

(f) 81 to 100 percent or more commitment to energy generation receives 5 points.

In order to receive more than 1 point for this energy generation paragraph, an accurate energy analysis prepared by an engineer will need to be submitted with the pre-application. Energy analysis of preliminary building plans using industry-recognized simulation software must document the projected total energy consumption of the building, the portion of building consumption which will be satisfied through on-site generation, and the building's Home Energy Rating System (HERS) score.

iii. Green Property Management Credentials—5 Points

Pre-applications may be awarded an additional 5 points if the designated property management company or individuals that will assume maintenance and operations responsibilities upon completion of construction work have a Credential for Green Property Management. Credentialing can be obtained from the National Apartment Association (NAA), National Affordable Housing Management Association, The Institute for Real Estate Management, U.S. Green Building Council's Leadership in Energy and Environmental Design for Operations and Maintenance (LEED OM), or another Agency-approved source with a certifiable credentialing program. Credentialing must be illustrated in the resume(s) of the property management team and included with the pre-application.

The Agency will total the points awarded to each pre-application

received within the timeframes of this Notice and rank each pre-application according to total score. If point totals are equal, the earliest time and date the pre-application was received by the Agency will determine the ranking. In the event pre-applications are still tied, they will be further ranked by giving priority to those projects with the earliest Rural Development operational date as defined under section VII (5).

B. Confirmation of Eligibility

Eligibility will be confirmed after ranking is completed on the 10 highest-scoring pre-applications in each State. If one or more of the 10 highest-scoring pre-applications is determined ineligible (i.e., the applicant is a borrower that is not in good standing with the Agency or has been debarred or suspended by the Agency, etc.), then the next highest-scoring pre-application will be confirmed for eligibility.

If one or more of the 10 highest-ranking pre-applications is a portfolio transaction, eligibility determinations will be conducted on each pre-application associated with the portfolio. Should any of the pre-applications associated with the portfolio sale be determined ineligible, those ineligible pre-application(s) will be rejected, but the overall eligibility of the portfolio sale will not be affected as long as the requirements in Section I and other provisions of this Notice are met.

If one or more of the 10 highest-ranking pre-applications in a State is a project consolidation, and one of the projects involved in the consolidation does not meet the occupancy standards cited in Section III (2), that project(s) will be determined ineligible and eliminated from the proposed consolidation transaction.

C. Selection of Pre-Applications for Further Processing

Once ranking and eligibility confirmations are complete, the Agency will conduct a four-step process, described below, to select eligible pre-applications for submission of formal applications. This process will allow the Agency to develop a representative sampling of revitalization transaction types, assure geographic distribution, and assure an adequate pipeline of transactions to use all available funding. No State may have more than four pre-applications selected for submission of formal applications (3–MFH pre-applications and 1–FLH). If an insufficient number of pre-applications are received to use available funds, the Agency, at its sole discretion, may exceed the maximum pre-application cap per State. All MPR tools are available to be used on both Sections 514/516 and Section 515 projects.

Step One: The Agency will review the eligible pre-applications, categorize each pre-application as either Simple, Complex, or Portfolio (see section I), and sort them by State.

Step Two: The Agency will select, for further processing, the top-ranked portfolio transactions until a total of $50,000,000 in potential debt deferral is reached. Portfolio transactions will be limited to one per State (either RRH or FLH) and will count as one MPR transaction. A portfolio transaction, as defined in section I, will be limited to a maximum of 15 projects.

Step Three: The highest ranked complex transactions (RRH or FLH) will be selected for further processing, not to exceed one per State.

Step Four: Additional projects will be selected from the highest ranked eligible pre-applications involving simple transactions in each State until a total of three RRH pre-applications for MPR transactions are reached. If a FLH complex transaction has not been selected in Step Three above, one additional FLH project will be selected from the highest ranked eligible pre-applications involving FLH simple transactions, until a total of four MPR pre-applications per State is reached. States that do not have a FLH pre-application will be limited to three MPR pre-applications.

If there are insufficient funds for all projects under any step, the Agency may suspend further selections.

Any selected eligible applications from this Notice or prior Notices will be carried over to the next fiscal year for consideration. Any such unfunded pre-applications not approved by the Agency prior to September 30, 2016, will automatically be considered withdrawn by the Agency. Applicants, however, may reapply for funding under future Notices.

VIII. Processing of Selected Pre-Applications

Those eligible pre-applications that are ranked and then selected for further processing will be invited to submit a formal application on SF 424, ''Application for Federal Assistance.'' Those eligible pre-applications that are not selected for further processing will be retained by the Agency unless they are withdrawn according to this Notice. Applicants rejected will be notified their pre-applications were not selected and advised of their appeal rights under 7 CFR part 11. In the event a pre-application is selected for further processing and the applicant declines, the next highest ranked pre-application of the same transaction type in that State will be selected provided there is no change in the preliminary eligibility of the pre-applicant. If there are no other pre-applications of the same transaction type, then the next highest-ranked pre-application, regardless of transaction type, will be selected.

Applications (SF 424s) can be obtained and completed online. An electronic version of this form may be found on the internet at *http://www.grants.gov/web/grants/forms.html.* A hard copy may be obtained by contacting the State Office in the State where the project is located and can be submitted either electronically or in hard copy (refer to Section X for a listing of State Offices).

Awards made under this Notice are subject to the provisions contained in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012, Public Law 112–55, Division A sections 738 and 739 regarding corporate felony convictions and corporate Federal tax delinquencies. In accordance with those provisions, only selected applicants that are or propose to be corporations will submit this form as part of their MPR application. To comply with these provisions, all corporate applicants must submit an executed for AD–3030 which can be found online at: *http://www.ocio.usda.gov/forms/ocio_forms.html.*

If a pre-application is accepted for further processing, the applicant must submit additional information needed to demonstrate eligibility and feasibility (such as a CNA), consistent with this Notice and 7 CFR part 3560, prior to the issuance of any restructuring offer. The Agency will provide additional guidance to the applicant and request information and documents necessary to complete the underwriting and review process. Since the character of each application may vary substantially depending on the type of transaction proposed, information requirements will be provided as appropriate. Complete project information must be submitted as soon as possible, but in no case later than 45 calendar days from the date of Agency notification of the applicant's selection for further processing or September 1, 2015, whichever occurs first. Failure to submit the required information in a timely manner may result in the Agency discontinuing the processing of the request.

The Agency will work with the applicants selected for further

processing in accordance with the following:

1. Based on the feasibility of the type of transaction that will best suit the project and the availability of funds, further eligibility confirmation determinations will be conducted by the Agency.

2. If an Agency-approved CNA has not already been submitted to the Agency, an Agency-approved CNA will be required (see 7 CFR 3560.103(c) and the Agency's published ''Guidance on the Capital Needs Assessment Process'' available at *http://www.rurdev.usda.gov/HMF_MPR.html* and the CNA Statement of Work together with any non-conflicting amendments). Agency-approved CNAs must be prepared by a qualified independent contractor, and are obtained to determine needed repairs and any necessary adjustments to the reserve account for long-term project viability.

3. Underwriting will be conducted by the Agency. The feasibility and structure of each revitalization proposal will be based on the Agency's underwriting and determination of the restructuring tools that will minimize the cost to the Government consistent with the purposes of this Notice.

IX. MPR Offers

Approved MPR offers will be presented to successful applicants who will then have up to 15 calendar days to accept or reject the offer in writing. If no offer is made, the application will be rejected and appeal rights will be given. Closing of MPR offers will occur within 90 days of acceptance by the applicant unless extended in writing by the Agency.

X. Appeal Process

All adverse determinations are appealable pursuant to 7 CFR part 11. Instructions on the appeal process will be provided at the time an applicant is notified of the adverse action.

Dated: September 15, 2014.

Tony Hernandez,

Administrator, Rural Housing Service.

BILLING CODE 3410–XV–P

Form Approved:
OMB No. 0575-0190

Fiscal Year 2014 Pre-Application for Multi-Family Housing Revitalization Demonstration Program (MPR)

Instructions

Applicants are encouraged, but not required, to submit this pre-application form electronically by accessing the website: http://www.rurdev.usda.gov/HMF_MPR.html and clicking on the link for the "Fiscal Year 2014 Pre-Application for Multi-Family Housing Revitalization Demonstration Program (MPR)." Please note that electronic submittals are not on a secured website. If you do not wish to submit the form electronically by clicking on the **Send Form** button, you may still fill out the form, print it and submit it with your application package to the National Office. You also have the option to save the form, and submit it on an electronic media to the National Office with your complete application package.

Supporting documentation required by this pre-application may be sent via e-mail with your electronic pre-application. Under item **IX. Documents Submitted**, check all supporting documents that you are submitting and indicate whether you are submitting each item in hard copy form, on electronic media, or via e-mail with this pre-application.

I. Applicant Information

a. **Applicant's Name:** _____

b. **Applicant's Address:**

Address, Line 1: _____

Address, Line 2: _____

City: _____ **State:** _____ **Zip:** _____

c. **Name of Applicant's Contact Person:** _____

d. **Contact Person's Telephone Number:** _____

e. **Contact Person's E-mail Address:** _____

f. **DUNS Number if applying for a grant:** _____

II. Project Information

a. **Primary Project Name:** _____

b. **Project Address:**

Address, Line 1: _____

Address, Line 2: _____

City: _____ **State:** _____ **Zip:** _____

c. **Is this a Simple, Complex, or Portfolio transaction? Check One.**

Simple: ___ **Complex:** ___ **Portfolio:** ___

d. **If Portfolio, what is the Portfolio Name?** A separate pre-application must be submitted for each project and each pre-application must have the same "**Portfolio Name**." A portfolio transaction will be limited to a maximum of 15 projects.

_____

e. **Consolidation of project operations:**
Check one below:

- ☐ **This proposal does not involve a consolidation of properties (0 points)**
- ☐ **This proposal involves a consolidation of 2-4 properties (5 points)**
- ☐ **This proposal involves a consolidation of 5 or more properties (10 points)**

Points: ____

Be sure to list all properties being consolidated in f. below.

f. **Provide the following information for the projects being considered in this pre-application, starting with the Primary Project.**

	Borrower ID	Proj. ID	Project Name	Vacancy Percentage (for 515 Only)	Proj. ST	Project Type 515/514/516
List Primary Project:						
1.						
List Projects to be Consolidated with the Primary Project:						
2.						
3.						
	Borrower ID	**Proj. ID**	**Project Name**	**Vacancy Percentage (for 515 Only)**	**Proj. ST**	**Project Type 515/514/516**
4.						

5.						
6.						
7.						
8.						
9.						
10.						
11.						
12.						
13.						
14.						
15.						

For Section 515 Multi-Family Housing projects: If vacancy percentages for any of the projects listed above have 16 or more revenue producing units exceeding 10.0%, or 15.0% for projects with less than 16 revenue producing units, attach required market survey documentation.

For Sections 514/516 Off-Farm Labor Housing projects: If cash flow for the previous 3 full years of operation is not positive, attach required market survey documentation.

Year of Operation: _____ **Cash Flow:** _____

Year of Operation: _____ **Cash Flow:** _____

Year of Operation: _____ **Cash Flow:** _____

g. **What is the age of the project?** (For a project consolidation, including portfolio transactions, use the project with the earliest operational date.) **Check one.**

- **Was the initial project operational date(s) prior to December 21, 1979? (30 points) Yes __**
- **Was the initial project operational date(s) on or after December 21, 1979; but before December 15, 1989? (20 points) Yes __**
- **Was the initial operational date(s) on or after December 15, 1989; but before October 1, 1991? (10 points) Yes __**
- **Was the initial operational date(s) on or after October 1, 1991? (0 points) Yes __**
  - **If you answered "Yes" to the first three bullet points, provide the initial operational date of the project: ___/___/____ (mm/dd/yyyy)** Points: ____

h. **Is there an Agency-approved Capital Needs Assessment (CNA)? Yes __ No __**
If "Yes," check one:

- **Was the CNA approved on or after October 1, 2012, and prior to October 1, 2013? (10 points) Yes __**
- **Was the CNA approved on or after October 1, 2013, but before the publication of the FY 2014 MPR Notice? (20 points) Yes __**
  - **If "Yes," provide the date of the most recent Agency-approved CNA: ___/___/____ (mm/dd/yyyy)** Points: ____

III. Funds

a. **Are there contributions of other sources of funds? Yes __ No __**
If "Yes," check one:

- **Evidence of a commitment of at least $3,000 to $5,000 per unit/per project from other sources? (15 points) Yes __**
- **Evidence of a commitment greater than $5,000 per unit/per project from other sources? (25 points) Yes __** Points: ____

If "Yes," provide the amounts obtained from the following sources. Note: only include amounts for a Rural Development (RD) Section 515 loran or Section 514/516 loan/grant if they have already been approved and obligated by RD.

Source:	Amount:
Tax Credits	_____
3rd Party Loan	_____
3rd Party Grant	_____
Tax Exempt Financing	_____
RD Section 515 Rehabilitation Loan	_____

RD Section 514/516 Off-Farm Rehabilitation Loan/Grant _____
RD Section 538 Funds _____
RD Preservation Revolving Loan Funds _____
Owner Provided Capital Contributions _____
Total Contributions: _____

b. Does this proposal include an Owner Contribution of funds to pay transaction costs and/or hard costs of construction? Select all that apply.

- **An owner contribution of $10,000 per project to pay transaction costs. (20 points) Yes __ No __** Points: ____

  These funds cannot be from the project's reserve, operating funds, tax credit equity, or be in the form of donated services provided by the applicant. Transaction costs are defined as those Agency-approved costs required to complete the transaction under this Notice and includes, but are not limited to, the CNA, legal and closing costs, appraisal costs and filing/recording fees. A minimum contribution of $10,000 per project must be deposited into the respective project reserve account from the owner's non-project reserve account prior to closing the MPR transaction. An increase in Return to Owner is not allowed on these funds.

- **An owner contribution of $1,000 per unit per project for the hard costs of construction. (10 points) Yes __ No __** Points: ____

  These funds cannot be from the project's reserve account or operating account or in the form of a loan. Hard costs of construction are defined as those costs for materials, inventory, equipment, property or machinery required to complete the proposal under this Notice. Hard costs of construction are itemized on Form RD 1924-13, "Estimate and Certificate of Actual Cost." Form RD 1924-13 can be found at https://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD1924-0013.pdf. The minimum contribution required to receive these points is $1,000 ***per unit, per project*** *which will be required to be deposited in the project reserve account or supervised/construction account prior to closing. An increased RTO may be budgeted and allowed for funds committed in accordance with 7 CFR section 3560.406(d)(14)(ii).*

c. Special Initiatives and Memorandum of Understanding.

- **A written commitment of State funds in the form of a grant for a minimum of 30 percent of the total development cost will be provided within 45 days of selection (15 points). Yes __ No __** Points: ____

  Points may be awarded to applications received from any State where there is a recognized, State funded program to be used for preservation and rehabilitation of existing Section 514 or Section 515 housing. To be eligible for these points, the State funds must be provided in the form of a grant and must be for a minimum of 30 percent of the total development cost. State funds do not need to be committed at the time of the NOFA responses; however if selected to proceed, the applicant must provide a written commitment of the funds from the State Agency within 45 days of selection. Failure to provide this information may result in the Agency withdrawing the pre-application.

IV. Transfers and Sales

a. **Does this proposed transaction include a transfer of ownership? Yes__ No__**
If "Yes," select one of the following categories and attach a copy of the *executed* Purchase Agreement.

b. **Has the Agency servicing classification been identified as "C" or "D" for 24 months or more? (20 points) Yes __**

c. **Has the Agency servicing classification been identified as "C" or "D" for less than 24 months? (15 points) Yes __ No to b. and c. ___** Points: ____

If "No," (not involved in a transfer), category d. or e. apply:

d. **For stay-in-owners only, has the Agency servicing classification been identified as "B" as a result of a workout plan and/or transition plan approved by the Agency prior to January 1, 2014? (25 points) Yes ___**
NOTE: Projects with an Agency "C" classification for 12 months or longer with open physical findings at the time the MPR pre-application is filed will not be considered eligible to participate in the MPR.

e. **Is a sale of Section 515 properties to Non-profit/Public Housing Authority under the prepayment process proposed or closed? If so, submit a copy of the purchase agreement with this pre-application (if sale is pending) or a copy of the purchase agreement and filed deed (if sale is closed). (20 points)**
Yes ___ No to d. and e. ___ Points: ____

V. Energy Conservation

You may answer a. and c. below, or b. and c. Note, if you are participating in the Green Communities program under a., you may not receive additional points for items listed under b.

a. **Does this proposal include a written commitment to achieve participation in the Green Communities program by the Enterprise Community Partners (http://www.enterprisecommunity.com/solutions-and-innovation/enterprise-green-communities) or an equivalent Agency-approved program?** *At least 30 percent of the points needed to qualify for the Green Communities program must be earned under the Energy Efficiency section of the Green Communities qualification program. Each applicant must provide a checklist establishing that the perquisites for each program's participation will be met. All checklists must be accompanied by a signed affidavit by the project architect or engineer stating that the goals are achievable.* **(30 points)**
Yes ___ No ___ Points: ____

OR

b. If you are not enrolling in the Green Communities program then points can be accumulated for each of the following items up to a total of **20 points**. Provide documentation to substantiate your answers below:

i. Does this proposal include the replacement of heating, ventilation, and air conditioning (HVAC) equipment with Energy Star qualified heating, ventilation and air conditioning equipment? (3 points): Yes ___ No ___ Points: ____

ii. Does this proposal include the replacement of windows and doors with Energy Star qualified windows and doors? (3 points): Yes ___ No ___ Points: ____

iii. Does this proposal include additional attic and wall insulation that exceeds the required R-Value of these building elements for your area as per the International Energy Conservation Code 2012? Two points will be awarded if all exterior walls exceed insulation code and one point will be awarded if attic insulation exceeds code, for a maximum of three points.

All exterior walls exceed insulation code (2 points):
Yes ___ No ___ Points: ____
Attic insulation exceeds code (1 point):
Yes ___ No ___ Points: ____

iv. Does this proposal include the reduction in building shell air leakage by at least 15 percent as determined by pre- and post-rehab blower door testing on a sample of units? Building shell air leakage may be reduced through materials such as caulk, spray foam, gaskets, and house-wrap. Sealing of duct work with mastic, foil-backed tape, or aerosolized duct sealants can also help reduce air leakage. (3 points): Yes ___ No ___ Points: ____

v. Does this proposal include 100 percent of installed appliances and exhaust fans that are Energy Star qualified? (2 points): Yes ___ No ___ Points: ____

vi. Does this proposal include 100 percent of installed water heaters that are Energy Star qualified? (2 points): Yes ___ No ___ Points: ____

vii. Does this proposal include replacement of 100 percent of toilets with a flush capacity of more than1.6 gallons with new toilets having 1.6 gallon flush capacity or less, and with the Environmental Protection Agency (EPA) Water Sense label? (1 point): Yes ___ No ___ Points: ____

viii. Does this proposal include 100 percent of new showerheads with EPA Water Sense label? (1 point): Yes ___ No ___ Points: ____

ix. **Does this proposal include 100 percent of new faucets with EPA Water Sense label? (1 point): Yes ___ No ___** Points: ____

x. **Does this proposal include 100 percent energy-efficient lighting including Energy Star qualified fixtures, compact fluorescent replacement bulbs in standard incandescent fixtures and Energy Star ceiling fans? (1 point): Yes ___ No ___** Points: ____

AND

c. **Does this proposal include a written commitment to achieve participation in local green/energy efficient building standards, such as a city, county or municipality program? (2 points): Yes ___ No ___** Points: ____

Name of Local Program: _____

Total Points for Energy Conservation: ____

VI. Energy Generation

Rehabilitation and preservation projects that participate in the **Green Communities program** by the Enterprise Community Partners, or an equivalent Agency-approved program, or receive at least **eight points** for Energy Conservation measures are eligible to earn additional points for installation of on-site renewable energy sources. Renewable, on-site energy generation will compliment a weathertight, well-insulated building envelope with highly efficient mechanical systems. Possible renewable energy generation technologies include, but are not limited to: wind turbines and micro-turbines, micro-hydro power, photovoltaics (capable of producing a voltage when exposed to radiant energy, especially light), solar hot water systems and biomass/biofuel systems that do not use fossil fuels in production. Geo-exchange systems are highly encouraged as they lessen the total demand for energy and, if supplemented with other renewable energy sources, can achieve zero energy consumption more easily. Points under this section will be awarded as follows:

a. Projects whose preliminary or rehabilitation building plans and energy analysis propose a 10 percent to 100 percent energy generation commitment (where generation is considered to be the total amount of energy needed to be generated on-site to make the building a net-zero consumer of energy) may be awarded points corresponding to their percent of commitment as follows:

- ☐ **0 to 9 percent commitment to energy generation (0 points)**
- ☐ **10 to 20 percent commitment to energy generation (1 point)**
- ☐ **21 to 40 percent commitment to energy generation (2 points)**
- ☐ **41 to 60 percent commitment to energy generation (3 points)**
- ☐ **61 to 80 percent commitment to energy generation (4 points)**

☐ **81 to 100 percent or more commitment to energy generation (5 points)**
Points: _____

Note: In order to receive **more than one point** for commitment to energy generation, an accurate energy analysis prepared by an engineer must to be submitted with the pre-application. Energy analysis of preliminary building plans using industry recognized simulation software must document the projected total energy consumption of the building, the portion of building consumption that will be satisfied through on-site generation, and the building's Home Energy Rating System (HERS) score.

VII. Green Property Management Credentials

Projects will be awarded an additional five points if the designated property management company or individuals that will assume maintenance and operations responsibilities upon completion of construction or substantial rehabilitation work have a Credential for Green Property Management. Credentialing can be obtained from the National Apartment Association (NAA), National Affordable Housing Management Association, The Institute for Real Estate Management, U.S. Green Building Council's Leadership in Energy and Environmental Design for Operations and Maintenance (LEED OM), or another Agency-approved source with a certifiable credentialing program. This must be illustrated in the resume(s) of the property management team and submitted with the application. (5 points)

I have submitted resumes of the designated property Management Company or individuals responsible for maintenance and operations that have a Credential for Green Property Management. (5 points) Yes ___ No ___ Points: _____

VIII. Tenant Service Provision

The Agency will award five points for applications that include new services provided by a non-profit organization, which may include a faith-based organization, or by another Government agency. Such services shall be provided at no cost to the project and shall be made available to all tenants. Examples of such services may include transportation for the elderly, after-school day care services, or after-school tutoring.

New tenant services will be provided to all tenants at no cost to the project. (5 points)
Yes ___ No ___ Points: _____

IX. Documents Submitted

Below, please check all documents that you will be submitting as part of your complete application package. Hard copy submissions and electronic media should be mailed to the National Office.

NOTE: You are only required to submit supporting documents for programs in which you will be participating as indicated in this pre-application. Points will be assigned for the items that you checked based on a review of the supporting documents.

Reference in Form	Item	Submission Mode
	FY 2014 Pre-application for MFH Revitalization Demonstration program (MPR) (this form).	☐ Email ☐ Hard Copy ☐ Electronic Media ☐ N/A
II. Project Information		
f.	Market Survey if vacancy rates are exceeded for Section 515 projects or there is negative cash flow for Section 514/516 projects.	☐ Email ☐ Hard Copy ☐ Electronic Media ☐ N/A
III. Funds		
a.	Evidence of commitment and sources of funds.	☐ Email ☐ Hard Copy ☐ Electronic Media ☐ N/A
b.	Evidence of owner contribution of funds for transaction costs.	☐ Email ☐ Hard Copy ☐ Electronic Media ☐ N/A
b.	Evidence of owner contribution of funds for hard costs of construction.	☐ Email ☐ Hard Copy ☐ Electronic Media ☐ N/A
c.	A written commitment of state funds in the form of a grant for 30 percent or more of TDC (to be provided within 45 days of selection)	☐ Email ☐ Hard Copy ☐ Electronic Media ☐ N/A
IV. Transfer and Sales		
a.	**Executed** Purchase Agreement for a transfer of ownership.	☐ Email ☐ Hard Copy ☐ Electronic Media ☐ N/A
e.	**Executed** Purchase Agreement for a sale to Nonprofit/Public Housing Authority under the prepayment process (if sale is pending) OR a copy of the Purchase Agreement and filed deed (if sale is closed).	☐ Email ☐ Hard Copy ☐ Electronic Media ☐ N/A
V. Energy Conservation		
a. OR	Certification in the Green Communities Program by the Enterprise Community Partners.	☐ Email ☐ Hard Copy ☐ Electronic Media ☐ N/A
b.	Documentation substantiating Green Energy improvements outlined in items i. through x.	☐ Email ☐ Hard Copy ☐ Electronic Media ☐ N/A
c.	Certification in local green energy efficient building standards.	☐ Email ☐ Hard Copy ☐ Electronic Media ☐ N/A
VI. Energy Generation		
a.	Energy analysis of preliminary building plans documenting total energy consumption, energy consumption satisfied by on-site generation and the building's Home Energy Rating System (HERS) score.	☐ Email ☐ Hard Copy ☐ Electronic Media ☐ N/A

Reference in Form	Item	Submission Mode
VII. Green Property Management Credentials		
	Resumes of the designated property management company or individuals responsible for maintenance and operations that have a credential for Green Property Management.	☐ Email ☐ Hard Copy ☐ Electronic Media ☐ N/A
VIII. Tenant Service Provision		
	Description of Tenant Services provided and organizations providing the service.	☐ Email ☐ Hard Copy ☐ Electronic Media ☐ N/A

X. MPR 2014 Scoring

PLEASE NOTE: The scoring below is based on the responses that you have provided on this pre-application form and may not accord with the final score that the Agency assigns upon evaluating the supporting documentation that you submit. Your score may change from what you see here if the supporting documentation does not adequately support your answer or, if required documentation is missing.

	Scoring Items for MPR 2014	Points Earned
1.	Consolidation of Project Operations (5, 10)	
2.	Age of Project (10, 20, 30)	
3.	Agency-approved Capital Needs Assessment (10, 20)	
4.	Contribution of Other Sources of Funds (15, 25)	
5.	Owner Contribution for transaction costs (20)	
6.	Owner Contribution for hard costs of construction (10)	
7.	State funds in the form of a grant for 30 percent or more of TDC (15)	
8.	Project classified as "C" or "D" for transfers (15, 20) **OR**	
9.	Project classified as "B" for stay-in owner (25) or sale to a non-profit (20)	
10.	Participation in the Green Communities Program (30) **OR** items 11. through 21.	
11.	Energy Star HVAC equipment (3)	
12.	Energy Star windows and doors (3)	
13.	Exterior wall insulation that exceeds code (2)	
14.	Attic insulation that exceeds code (1)	

	Scoring Items for MPR 2014	Points Earned
15.	Reduction in building shell air leakage (3)	
16.	Energy Star appliances and exhaust fans (2)	
17.	Energy Star water heaters (2)	
18.	Reduced flush-capacity toilets (1)	
19.	New showerheads with EPA water-sense label (1)	
20.	New faucets with EPA water-sense label (1)	
21.	Energy Star light fixtures and ceiling fans (1)	
22.	Participation in local green energy standards (2)	
23.	Energy Generation (1, 2, 3, 4, 5)	
24.	Green Property Management Credentials (5)	
25.	Tenant Service Provisions (5)	
	Total Score:	

According to the Paperwork Reduction Act of 1995, an Agency must not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0190. The time required to complete this information collection is estimated to average 60 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

[FR Doc. 2014–22476 Filed 9–22–14; 8:45 am]

BILLING CODE 3410–XV–C

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability for Section 515 Multi-Family Housing Preservation Revolving Loan Fund Demonstration Program for Fiscal Year 2014

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service of Rural Development previously announced in a Notice published June 5, 2013, (78 FR 33800), the availability of funds and the timeframe to submit applications for loans to both private non-profit organizations, and State and local housing finance agencies, to carry out a demonstration program to provide revolving loans for the preservation and revitalization of low-income Multi-Family Housing (MFH). Rural Development did not receive sufficient applications to use all the available funds. As a result, Rural Development is soliciting additional applications under this Notice for the remaining funding. This Notice also eliminates the $1 million cap on subsequent loans for existing intermediaries. Housing that is assisted by this demonstration program must be financed by Rural Development through its MFH loan program under Sections 515, 514 and 516 of the Housing Act of 1949. The goals of this demonstration program will be achieved through loans made to intermediaries. The intermediaries will establish their programs for the purpose of providing loans to ultimate recipients for the preservation and revitalization of low-income Sections 515, 514 and 516 MFH as affordable housing.

DATES: The deadline for receipt of all applications in response to this Notice is 5:00 p.m., Eastern Time. December 22, 2014. The application closing deadline is firm as to date and hour. Rural Development will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline. Acceptance by a post office or private mailer does not constitute delivery. Facsimile, electronic transmissions, and postage due applications will not be accepted.

ADDRESSES: Applicants should submit applications to USDA Rural Housing Service; Attention: Tonya Boykin, Administrative Assistant; Multi-Family Housing STOP 0782 (Room 1263–S); 1400 Independence Avenue SW., Washington, DC 20250–0782.

Rural Development will date and time stamp incoming applications to evidence timely receipt and, upon request, will provide the applicant with a written acknowledgment of receipt.

FOR FURTHER INFORMATION CONTACT: Sherry Engel, Finance and Loan Analyst, Multi-Family Housing, U.S. Department of Agriculture, Rural Development, 4949 Kirschling Court, Stevens Point, Wisconsin 54481 or by telephone at (715) 345–7677 or via email at: *sherry.engel@wdc.usda.gov* or Tiffany Tietz, Finance and Loan Analyst, Multi-Family Housing, U.S. Department of Agriculture, Rural Development, 3260 Eagle Park Drive, Suite 107, Grand Rapids, Michigan 49525 or by telephone at (616) 942–4111, Extension 126, TDD (302) 857–3585 or via email at: *tiffany.tietz@wdc.usda.gov.* (Please note the phone numbers are not toll free numbers).

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Housing Service.

Funding Opportunity Title: Section 515 Multi-Family Housing Preservation Revolving Loan Fund Demonstration Program for Fiscal Year 2014.

Announcement Type: Funding Request.

Catalog of Federal Domestic Assistance Number: 10.415.

Date: The deadline for receipt of all applications in response to this Notice is 5:00 p.m., Eastern Time, on December 22, 2014. The application closing deadline is firm as to date and hour. Rural Development will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline. Acceptance by a post office or private mailer does not constitute delivery. Facsimile, electronic transmissions and postage due applications will not be accepted.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 (2005) et seq., OMB must approve all ''collections of information'' by Rural Development. The Act defines ''collection of information'' as a requirement for ''answers to . . . identical reporting or recordkeeping requirements imposed on ten or more persons . . .'' (44 U.S.C. 3502(3)(A)). However, because it is anticipated that this Notice will receive less than ten respondents, the Paperwork Reduction Act does not apply.

Background

Past fiscal years' appropriations acts provided funding for, and authorized Rural Development to conduct a revolving loan fund demonstration program for the preservation and revitalization of Sections 515, 514 and 516 MFH portfolios. The money provided under the previous appropriations acts was authorized to remain available until expended. Sections 514, 515 and 516 of the Housing Act of 1949 as amended, provide Rural Development the authority to make loans for low-income Multi-Family Housing, Farm Labor Housing (FLH), and related facilities.

I. Funding Opportunities Description

This Notice requests applications from eligible applicants for loans to establish and operate revolving loan funds for the preservation of low-income MFH properties within the Rural Development Sections 514, 515 and 516 MFH portfolios. Rural Development's regulations for the Section 514, 515 and 516 MFH Program are published at 7 CFR part 3560.

Housing that is constructed or repaired must meet the Rural Development design and construction standards and the development standards contained in 7 CFR part 1924, subparts A and C, respectively. Once constructed, Sections 514, 515, and 516 MFH must be managed in accordance with the program's regulation, 7 CFR part 3560. Tenant eligibility is limited to persons who qualify as a very low- or low-income household or who are eligible under the requirements established to qualify for housing benefits provided by sources other than Rural Development, such as U.S. Department of Housing and Urban Development Section 8 assistance or Low Income Housing Tax Credits assistance, when a tenant receives such housing benefits. Additional tenant eligibility requirements are contained in 7 CFR Sections 3560.152, 3560.577, and 3560.624.

II. Award Information

Past appropriations acts made funding available for loans to private non-profit organizations, or such non-profit organizations' affiliate loan funds and State and local housing finance agencies, to carry out a housing demonstration program to provide revolving loans for the preservation of low-income MFH project. The total amount of funding available for this program is $16,426,512.04. This funding consists of carryover funds from previous fiscal years. Loans to

intermediaries under this demonstration program shall have an interest rate of no more than 1 percent and the Secretary of Agriculture may defer the interest and principal payment to Rural Development for up to three years during the first 3 years of the loan. The term of such loans shall not exceed 30 years. Funding priority will be given to entities with equal or greater matching funds from third parties, including housing tax credits for rural housing assistance and to entities with experience in the administration of revolving loan funds and the preservation of MFH.

Funding Restrictions

No loan made to a single intermediary applicant under this demonstration program may exceed $2,125,000 and any such loan may be limited by geographic area so that multiple loan recipients are not providing similar services to the same service areas. All Preservation Revolving Loan Fund (PRLF) obligations will have an obligation expiration period of 2 years from the date of obligation.

Prior Fiscal Year's PRLF loans that were obligated and not closed within the above 2-year obligation period must be de-obligated to allow more immediate program use unless a 6-month extension is granted by the National Office. The request for an extension will be sent to the National Office by the relevant State Office.

Loans made to the PRLF ultimate recipient must meet the intent of providing decent, safe, and sanitary rural housing and be consistent with the requirements of Title V of the Housing Act of 1949, as amended.

III. Eligibility Information

Applicant Eligibility

(1) Eligibility Requirements—*Intermediary.*

(a) The types of entities which may become intermediaries are private non-profit organizations, which may include faith and community based organizations, or such non-profit organizations' affiliate loan funds and State and local housing finance agencies.

(b) The intermediary must have:

i. The legal authority necessary for carrying out the proposed loan purposes and for obtaining, giving security, and repaying the proposed loan.

ii. A proven record of successfully assisting low-income MFH projects. Such record will include recent experience in loan making and loan servicing that is similar in nature to the loans proposed for the PRLF demonstration program. The applicant must provide documentation of a delinquency and loss rate note which does not exceed four percent. The applicant will be responsible for providing such information to Rural Development.

iii. A staff with loan making and servicing experience.

vi. A plan showing Rural Development, that the ultimate recipients will only use the funds to preserve low-income MFH projects.

(b) No loans will be extended to an intermediary unless:

i. There is adequate assurance of repayment of the loan evidenced by the fiscal and managerial capabilities of the proposed intermediary.

ii. The amount of the loan, together with other funds available, is adequate to complete the preservation or revitalization of the project.

iii. The intermediary's prior calendar year audit is an unqualified audited opinion signed by an independent Certified Public Accountant (CPA) acceptable to the Agency and performed in accordance with Generally Accepted Government Auditing Standards (GAGAS). The unqualified audited opinion must provide a statement relating to the accuracy of the financial statements.

(c) Intermediaries, and the principals of the intermediaries, must not be suspended, debarred, or excluded based on the ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs''. In addition, intermediaries and their principals must not be delinquent on Federal debt or be Federal judgment debtors.

(d) The intermediary and its principal officers (including immediate family) must have no legal or financial interest in the ultimate recipient.

(e) The intermediary's Debt Service Coverage Ratio (DSCR) must be greater than 1.25 for the fiscal year immediately prior to the year of application. The DSCR is the financial ratio the loan committee will use to determine an applicant's capacity to borrow and service additional debt. The loan committee will use the intermediary's Earnings Before Interest and Taxes (EBIT) to determine DSCR. EBIT is determined by adding net income or net loss to depreciation and interest expense. The loan committee will compare the principal and interest payment multiplied by the DSCR to the EBIT derived from the applicants consolidated income statement. For example, if an applicant requests a loan amount of $2,000,000 at a one percent interest rate amortized over 30 years, the principal and interest payments will be $77,193, annually. Therefore, an applicant who requests $2,000,000 needs an EBIT of at least $96,491 ($77,193 × 1.25). Only debt service from unrestricted revolving loans will be considered in the above calculation. An unrestricted loan is an account in which the accumulated revenues are not dictated by a donor or sponsor.

(f) Intermediaries that have received one or more PRLF loans may apply for and be considered for subsequent PRLF loans provided all the following are met:

i. For prior PRLF loans at least 50 percent of an intermediary's PRLF loans must have been disbursed to eligible ultimate recipients;

ii. Intermediaries requesting subsequent loans must meet the requirements of section III (1), Applicant Eligibility, of this Notice;

iii. The delinquency rate of the outstanding loans of the intermediary's PRLF revolving fund does not exceed four percent at the time of application for the subsequent loan;

iv. The intermediary is in compliance with all applicable regulations and its loan agreements with Rural Development;

v. Not more than one loan will be approved by Rural Development for an intermediary in any single fiscal year unless the request is authorized by a PRLF appropriation; and

vi. Total outstanding PRLF indebtedness of an intermediary to Rural Development will not exceed $15 million at any time.

Only eligible applicants will be scored and ranked. Funding priority will be given to entities with equal or greater matching funds, including housing tax credits for rural housing assistance. Refer to the Selection Criteria section of the Notice for further information on funding priorities.

(2) Eligibility Requirements—*Ultimate Recipients.*

(a) To be eligible to receive loans from the PRLF, ultimate recipients must:

i. Currently have a Rural Development Sections 515, or 514 loans, or 516 grant for the property to be assisted by the PRLF demonstration program.

ii. Certify that the principal officers (including their immediate family) of the ultimate recipient, hold no legal or financial interest in the intermediary.

iii. Be in compliance with all Rural Development program requirements or have an Agency approved work plan in place which will correct a non-compliance status.

(b) Any delinquent debt to the Federal Government including a non-tax judgment lien (other than a judgment in the U.S. tax courts), by the ultimate recipient or any of its principals, shall cause the proposed ultimate recipient to

be ineligible to receive a loan from the PRLF. PRLF may not be used to satisfy the delinquency.

(c) The ultimate recipient cannot be currently debarred or suspended from Federal Government programs.

(d) There is a continuous need for the property in the community as affordable housing.

Other Administrative Requirements

(1) The following policies and regulations apply to loans to intermediaries made in response to this Notice:

(a) PRLF intermediaries will be required to provide Rural Development with the following reports:

i. An annual audit;

A. The dates of the audit report period need not coincide with other reports on the PRLF. Audit reports shall be due 90 days following the audit period. The audit period will be set by the intermediary. The intermediary will notify Rural Development of the date. Audits must cover all of the intermediary's activities. Audits will be performed by an independent CPA. An acceptable audit will be performed in accordance with GAGAS and include such tests of the accounting records as the auditor considers necessary in order to express an unqualified audited opinion on the financial condition of the intermediary.

B. It is not intended that audits required by this program be separate from audits performed in accordance with State and local laws or for other purposes. To the extent feasible, the audit work for this program should be done in connection with these other audits. Intermediaries covered by OMB Circular A–133 should submit audits made in accordance with that circular.

ii. Quarterly or semiannual performance reports (due to Rural Development 30 days after the end of the fiscal quarter or half);

A. Performance reports will be required quarterly during the first year after loan closing. Thereafter, performance reports will be required semiannually. Also, Rural Development may resume requiring quarterly reports if the intermediary becomes delinquent in repayment of its loan or otherwise fails to fully comply with the provisions of its work plan or Loan Agreement, or Rural Development determines that the intermediary's PRLF is not adequately protected by the current financial status and paying capacity of the ultimate recipients.

B. These performance reports shall contain information only on the PRLF, or if other funds are included, the PRLF portion shall be segregated from the others; and in the case where the intermediary has more than one PRLF from Rural Development, a separate report shall be made for each PRLF.

C. The performance report will include OMB Standard Form 425, Federal Financial Report. This report will provide information on the intermediary's lending activity, income and expenses, financial condition and a summary of names and characteristics of the ultimate recipients the intermediary has financed.

iii. Annual proposed budget for the following year; and other reports as Rural Development may require from time to time regarding the conditions of the loan.

(b) Security will consist of a pledge by the intermediary of all assets now or hereafter placed in the PRLF, including cash and investments, notes receivable from ultimate recipients, and the intermediary's security interest in collateral pledged by ultimate recipients. Except for good cause shown, Rural Development will not obtain assignments of specific assets at the time a loan is made to an intermediary or ultimate recipient. The intermediary will covenant in the loan agreement that if the intermediary's financial condition deteriorates or the intermediary takes action detrimental to prudent fund operation, or the intermediary fails to take action required of a prudent lender, then it will provide additional security, execute any additional documents, and undertake any reasonable acts Rural Development may request to protect Rural Development's interest or to perfect a security interest in any asset, including physical delivery of assets and specific assignments to Rural Development. All debt instruments and collateral documents used by an intermediary in connection with loans to ultimate recipients may be assignable.

(c) Rural Development may consider, on a case by case basis, subordinating its security interest on the ultimate recipient's property to the lien of the intermediary so that Rural Development has a junior lien interest when an independent appraisal verifies the Rural Development subordinated lien will continue to be fully secured.

(d) The term of the loan to an ultimate recipient may not exceed the lessor of 30 years or the remaining term of the Rural Development loan.

(e) When loans are made to ultimate recipients restrictive-use provisions must be incorporated, as outlined in 7 CFR Section 3560.662.

(f) The policies and regulations contained in 7 CFR Part 1901, Subpart F regarding historical and archaeological properties apply to all loans funded under this Notice.

(g) The policies and regulations contained in 7 CFR Part 1940, Subpart G regarding environmental assessments apply to all loans to ultimate recipients funded under this Notice. Loans to intermediaries under this program will be considered a categorical exclusion under the National Environmental Policy Act, requiring the completion of Form RD 1940–22, ''*Environmental Checklist for Categorical Exclusions*,'' by Rural Development.

(h) An Intergovernmental Review will be conducted in accordance with the procedures contained in 7 CFR Part 3015, Subpart V, if the applicant is a cooperative.

(2) The intermediary agrees to the following:

(a) To obtain written Rural Development approval, before the first lending of PRLF funds to an ultimate recipient, of:

i. All forms to be used for relending purposes, including application forms, loan agreements, promissory notes, and security instruments; and

ii. The intermediary's policy with regard to the amount and form of security to be required.

(b) To obtain written approval from Rural Development before making any significant changes in forms, security policy, or the intermediary's work plan. Rural Development may approve changes in forms, security policy, or work plans at any time upon a written request from the intermediary and determination by Rural Development that the change will not jeopardize repayment of the loan or violate any requirement of this NOTICE or other Rural Development regulations. The intermediary must comply with the work plan approved by Rural Development so long as any portion of the intermediary's PRLF loan is outstanding;

(c) To allow Rural Development to take a security interest in the PRLF, the intermediary's portfolio of investments derived from the proceeds of the loan award, and other rights and interests as Rural Development may require;

(d) To return, as an extra payment on the loan any funds that have not been used in accordance with the intermediary's work plan by a date two years from the date of the loan agreement, unless an extension has been granted. The intermediary acknowledges that Rural Development may cancel the approval of any funds not yet delivered to the intermediary if funds have not been used in accordance with the intermediary's work plan within the 2-year period. Rural

Development, at its sole discretion, may allow the intermediary additional time to use the loan funds by delaying cancellation of the funds by no more than three additional years. If any loan funds have not been used by 5 years from the date of the loan agreement, the approval will be canceled for any funds that have not been delivered to the intermediary and, in addition, the intermediary will return, as an extra payment on the loan, any funds it has received and not used in accordance with the work plan. In accordance with the Rural Development approved promissory note, regular loan payments will be based on the amount of funds actually drawn by the intermediary.

(e) The intermediary will be required to enter into a Rural Development approved loan agreement and promissory note. The intermediary will receive a 30-year loan at a 1 percent interest rate. The loan will be deferred for up to 3 years if requested in the intermediary's work plan.

(f) Loans made to the PRLF ultimate recipient must meet the intent of providing decent, safe, and sanitary rural housing by preserving and regulating existing properties financed with Sections 514, 515, and 516 funds. They must also be consistent with the requirements of Title V of the Housing Act of 1949, as amended.

(d) When an intermediary proposes to make a loan from the PRLF to an ultimate recipient, Rural Development concurrence is required prior to final approval of the loan. The intermediary must submit a request for Rural Development concurrence of a proposed loan to an ultimate recipient. Such request must include:

i. Certification by the intermediary that:

A. The proposed ultimate recipient is eligible for the loan;

B. The proposed loan is for eligible purposes;

C. The proposed loan complies with all applicable statutes and regulations; and

D. Prior to closing the loan to the ultimate recipient, the intermediary and its principal officers (including immediate family) hold no legal or financial interest in the ultimate recipient, and the ultimate recipient and its principal officers (including immediate family) hold no legal or financial interest in the intermediary.

ii. Copies of sufficient material from the ultimate recipient's application and the intermediary's related files, to allow Rural Development to determine the:

A. Name and address of the ultimate recipient;

B. Loan purposes;

C. Interest rate and term;

D. Location, nature, and scope of the project being financed;

E. Other funding included in the project;

F. Nature and lien priority of the collateral; and

G. Environmental impacts of this action. This will include an original Form RD 1940–20, ''*Request for Environmental Information*,'' completed and signed by the intermediary. Attached to this form will be a statement stipulating the age of the building to be rehabilitated and a completed and signed Federal Emergency Management Agency (FEMA) Form 81–93, ''Standard Flood Hazard Determination.'' If the age of the building is over 50 years or if the building is either on or eligible for inclusion in the National Register of Historic Places, then the intermediary will immediately contact Rural Development to begin Section 106 of the National Historic Preservation Act of 1966 consultation with the State Historic Preservation Officer. If the building is located within a 100-year flood plain, then the intermediary will immediately contact Rural Development to analyze any effects as outlined in 7 CFR part 1940, Subpart G, Exhibit C. The intermediary will assist Rural Development in any additional requirements necessary to complete the environmental review.

iii. Such other information as Rural Development may request on specific cases.

(e) Upon receipt of a request for concurrence in a loan to an ultimate recipient Rural Development will:

i. Review the material submitted by the intermediary for consistency with Rural Development's preservation and revitalization principles which include the following;

A. There is a continuing need for the property in the community as affordable housing. If Rural Development determines there is no continuing need for the property the ultimate recipient is ineligible for the loan;

B. When the transaction is complete, the property will be owned and controlled by eligible Section 514, 515, or 516 borrowers;

C. The transaction will address the physical needs of the property;

D. Existing tenants will not be displaced because of increased post transaction rents;

E. Post transaction basic rents will not exceed comparable market rents; and

F. Any equity loan amount will be supported by a market value appraisal.

ii. The Intermediary shall pledge as collateral for non-Rural Development funds its PRLF, including its portfolio of investments derived from the proceeds of other funds and this loan award.

iii. Issue a letter concurring with the loan when all requirements have been met or notify the intermediary in writing the reasons for denial when Rural Development determines it is unable to concur with the loan.

IV. Application and Submission Information

The application process is a two-step process: First, all applicants will submit proposals to the National Office for loan committee review. The loan committee will determine if the borrower is eligible, score the application, and rank the applicants according to the criteria established in this Notice. Only eligible borrowers will be scored. The loan committee will select proposals for further processing. In the event that a proposal is selected for further processing and the applicant declines, the next highest ranked unfunded applicant may be selected. Second, after the loan is obligated to the intermediary but prior to loan closing, the State Office in the applicant's residence or State where the applicant will be doing its intermediary work will provide written approval of all forms to be used for relending purposes, including application forms, loan agreements, promissory notes, and security instruments. Additionally, the State Office will provide written approval of the applicant's binding policy with regard to the amount and form of security to be required.

Once the loan closes, the applicant will be required to comply with the terms of its work plan which describes how the money will be used, the loan agreement, the promissory note and any other loan closing documents. At the time of loan closing, Rural Development and loan recipient shall enter into a loan agreement and a promissory note acceptable to Rural Development. Loans obligated by State Offices to intermediaries must close on or before the second anniversary of the dated pre-approval letter mentioned above. Applicants who have not closed by this date must de-obligate PRLF funds to allow further program use of funds.

Application Requirements

The application must contain the following:

(1) A summary page, that is double-spaced and not in narrative form, that lists the following items:

(a) Applicant's name.

(b) Applicant's Taxpayer Identification Number.

(c) Applicant's address.

(d) Applicant's telephone number.

(e) Name of applicant's contact person, telephone number, and address.

(f) Amount of loan requested.

(2) Form RD 4274–1, ''*Application for Loan (Intermediary Relending Program).*'' This form can be found at: *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD4274-1.PDF.*

(3) A written work plan and other evidence Rural Development require that demonstrates the feasibility of the intermediary's program to meet the objectives of this demonstration program. The plan must, at a minimum, include all of the following:

(a) Document the intermediary's ability to administer this demonstration program in accordance with the provisions of this Notice. In order to adequately demonstrate the ability to administer the program, the intermediary must provide a complete listing of all personnel responsible for administering this program along with a statement of their qualifications and experience. The personnel may be either members or employees of the intermediary's organization or contract personnel hired for this purpose. If the personnel are to be contracted for, the contract between the intermediary and the entity providing such service will be submitted for Rural Development review, and the terms of the contract and its duration must be sufficient to adequately service the Rural Development loan through to its ultimate conclusion. If Rural Development determines the personnel lack the necessary expertise to administer the program, the loan request will be denied.

(b) Document the intermediary's ability to commit financial resources under the control of the intermediary to the establishment of the demonstration program. This should include a statement of the sources of non-Rural Development funds for administration of the intermediary's operations and financial assistance for projects.

(c) Demonstrate a need for loan funds. As a minimum, the intermediary should identify a sufficient number of proposed and known ultimate recipients to justify Agency funding of its loan request, or include well developed targeting criteria for ultimate recipients consistent with the intermediary's mission and strategy for this demonstration program, along with supporting statistical or narrative evidence that such prospective recipients exist in sufficient numbers to justify Rural Development funding of the loan request.

(d) Include a list of proposed fees and other charges it will assess to the ultimate recipients.

(e) Provide documentation to Rural Development the intermediary has secured commitments of significant financial support from public agencies and private organizations or have received tax credits for the calendar year prior to this Notice.

(f) Include the intermediary's plan (specific loan purposes) for relending the loan funds. The plan must be of sufficient detail to provide Rural Development with a complete understanding of what the intermediary will accomplish by lending the funds to the ultimate recipient and the complete mechanics of how the funds will flow from the intermediary to the ultimate recipient. The service area, eligibility criteria, loan purposes, fees, rates, terms, collateral requirements, limits, priorities, application process, method of disposition of the funds to the ultimate recipient, monitoring of the ultimate recipient's accomplishments, and reporting requirements by the ultimate recipient's management must at least be addressed by the intermediary's relending plan.

(g) Provide a set of goals, strategies, and anticipated outcomes for the intermediary's program. Outcomes should be expressed in quantitative or observable terms such as low-income housing complexes rehabilitated or low-income housing units preserved, and should relate to the purpose of this demonstration program; and

(h) If the intermediary provides technical assistance, (providing technical assistance to ultimate recipients is not required as part of this program), the intermediary will provide specific information as to how and what type of technical assistance the intermediary will provide to the ultimate recipients and potential ultimate recipients. For instance describe the qualifications of the technical assistance providers, the nature of technical assistance that will be available, and expected and committed sources of funding for technical assistance. If other than the intermediary itself, describe the organizations providing such assistance and the arrangements between such organizations and the intermediary.

(4) A pro forma balance sheet at start-up and projected balance sheets for at least three additional years; and projected cash flow and earnings statements for at least three years supported by a list of assumptions showing the basis for the projections. The projected earnings statement and balance sheet must include one set of projections that shows a full annual installment on the PRLF loan.

(5) A written agreement of the intermediary to Rural Development agreeing to the audit requirements.

(6) Form RD 400–4, ''*Assurance Agreement.*'' A copy of which can be obtained at: *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD400-4.PDF.*

(7) Complete organizational documents, including evidence of authority to conduct the proposed activities.

(8) Most recent unqualified audit report signed by a CPA and prepared in accordance with GAGAS.

(9) Form RD 1910–11, ''*Applicant Certification Federal Collection Policies for Consumer or Commercial Debts*,'' a copy of which can be obtained at: *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD1910-11.PDF.*

(10) Form AD–1047, ''*Certification Regarding Debarment, Suspension, and other Responsibility Matters—Primary Covered Transactions*,'' a copy of which can be obtained at: *http://www.ocio.usda.gov/forms/doc/AD1047-F-01-92.PDF.*

(11) Exhibit A–1 of RD Instruction 1940–Q, ''*Certification for Contracts, Grants, and Loans*,'' a copy of which can be obtained at: *http://www.rurdev.usda.gov/me/CBP/const/1940qa1.pdf.*

(12) Copies of the applicant's tax returns for each of the three years prior to the year of application, and most recent audited financial statements.

(13) A separate one-page information sheet listing each of the ''Selection Criteria'' contained in this Notice, followed by the page numbers of all relevant material and documentation that is contained in the proposal that supports these criteria. Applicants are also encouraged, but not required, to include a checklist of all of the application requirements and to have their application indexed and tabbed to facilitate the review process.

(14) Financial statements (consolidated or unconsolidated) for the year prior to this Notice.

(15) A borrower authorization statement allowing Rural Development the authorization to verify past and present earnings with the preparer of the intermediary's financial statements.

V. Application Review Information

All applications will be evaluated by a loan committee. The loan committee will make recommendations to the Rural Housing Service Administrator concerning preliminary eligibility

determinations and for the selection of applications for further processing based on the selection criteria contained in this Notice and the availability of funds. The Administrator will inform applicants of the status of their application within 30 days of the loan application closing date set forth in this Notice.

Selection Criteria

Selection criteria points will be allowed only for factors evidenced by well documented, reasonable work plans which provide assurance that the items have a high probability of being accomplished. The points awarded will be as specified in paragraphs (1) through (4) of this section. In each case, the intermediary's application must provide documentation that the selection criteria have been met in order to qualify for selection criteria points. If an application does not cover one of the categories listed, it will not receive points for those criteria.

(1) Other funds. Points allowed under this paragraph are to be based on documented successful history or written evidence that the funds are available.

(a) The intermediary will obtain non-Rural Development loan or grant funds or provide housing tax credits (measured in dollars) to pay part of the cost of the ultimate recipients' project cost. Points for the amount of funds from other sources are as follows:

i. At least 10 percent but less than 25 percent of the total development cost (as defined in 7 CFR 3560.11)—5 points;

ii. At least 25 percent but less than 50 percent of the total development cost—10 points; or

iii. 50 percent or more of the total development cost—15 points.

(b) The intermediary will provide loans to each ultimate recipient from its own funds (not loan or grant) to pay part of the ultimate recipients' project cost. The amount of the intermediary's own funds will average per project:

i. At least 10 percent but less than 25 percent of the total development cost—5 points;

ii. At least 25 percent but less than 50 percent of total development cost—10 points; or

iii. 50 percent or more of total development cost—15 points.

(2) Intermediary contribution. The Intermediary will contribute its own funds not derived from Rural Development. The non-Rural Development contributed funds will be placed in a separate account from the PRLF account. The intermediary shall contribute funds not derived from Rural Development into a separate bank account or accounts according to their ''work plan''. These funds are to be placed into an interest bearing counter-signature-account for three years as set forth in the loan agreement. The counter-signature-account will require a signature from a Rural Development employee and an intermediary. After three years, these funds shall be commingled with the PRLF to provide loans to the ultimate recipient for the preservation and revitalization of Section 514, or 515, or 516 Multi-Family Housing.

The amount of non-Agency derived funds contributed to the PRLF will equal the following percentage of Rural Development PRLF:

(a) At least 5 percent but less than 15 percent—5 points;

(b) At least 15 percent but less than 25 percent—30 points; or

(c) 25 percent or more—50 points.

(3) Experience. The intermediary has actual experience in the administration of revolving loan funds and the preservation of MFH, with a successful record, for the following number of full years. Applicants must have actual experience in both the administration of revolving loan funds and the preservation of MFH in order to qualify for points under the selection criteria. If the number of years of experience differs between the two types of above listed experience, the type of experience with the lesser number of years will be used for the selection criteria.

(a) At least one but less than three years—5 points;

(b) At least three but less than five years—10 points;

(c) At least five but less than 10 years—20 points; or

(d) 10 or more years—30 points.

(4) Administrative. The Administrator may assign up to 25 additional points to an application to account for the following items not adequately covered by the other priority criteria set out in this section. The items that will be considered are the amount of funds requested in relation to the amount of need; a particularly successful affordable housing development record; a service area with no other PRLF coverage; a service area with severe affordable housing problems; a service area with emergency conditions caused by a natural disaster; an innovative proposal; the quality of the proposed program; a service area that includes a community or county designated as a Promise Zone or participating in the Stronger Economies Together (SET) initiative with USDA Rural Development or excellent utilization of an existing revolving loan fund program. The Administrator will document the reasons for the particular point allocation.

VI. Appeal Process

All adverse determinations regarding applicant eligibility and the awarding of points as part of the selection process are appealable. Instructions on the appeal process will be provided at the time an applicant is notified of the adverse action.

Equal Opportunity and Nondiscrimination Requirements

(1) In accordance with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, the Equal Credit Opportunity Act, the Age Discrimination Act of 1975, Executive Order 12898, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973, neither the intermediary nor Rural Development will discriminate against any employee, proposed intermediary or proposed ultimate recipient on the basis of sex, marital status, race, familial status, color, religion, national origin, age, physical or mental disability (provided the proposed intermediary or proposed ultimate recipient has the capacity to contract), because all or part of the proposed intermediary's or proposed ultimate recipient's income is derived from public assistance of any kind, or because the proposed intermediary or proposed ultimate recipient has in good faith exercised any right under the Consumer Credit Protection Act, with respect to any aspect of a credit transaction anytime Rural Development loan funds are involved.

(2) The policies and regulations contained in 7 CFR Part 1901, Subpart E apply to this program.

(3) The Rural Housing Service Administrator will assure that equal opportunity and nondiscrimination requirements are met in accordance with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, the Equal Credit Opportunity Act, the Age Discrimination Act of 1975, Executive Order 12898, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973.

(4) All housing must meet the accessibility requirements found at 7 CFR Section 3560.60(d).

The U.S. Department of Agriculture prohibits discrimination against its customers, employees, and applicants for employment on the basis of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived

from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)

If you wish to file an employment complaint, you must contact your Agency's *EEO Counselor* (PDF) within 45 days of the date of the alleged discriminatory act, event, or in the case of a personnel action. Additional information can be found online at *http://www.ascr.usda.gov/complaint_filing_file.html.*

If you wish to file a Civil Rights program complaint of discrimination, complete the *USDA Program Discrimination Complaint Form* (PDF), found online at *http://www.ascr.usda.gov/complaint_filing_cust.html,* or at any USDA office, or call (886) 632–9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410, by fax (202) 690–7442 or email at *program.intake@usda.gov.*

Individuals who are deaf, hard of hearing or have speech disabilities and you wish to file either an EEO or program complaint please contact USDA through the Federal Relay Service at (800) 877–8339 or (800) 845–6136 (in Spanish).

Persons with disabilities, who wish to file a program complaint, please see information above on how to contact us by mail directly or by email. If you require alternative means for communication of program information (e.g., Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Dated: September 15, 2014.

Tony Hernandez,

Administrator, Rural Housing Service.

[FR Doc. 2014–22512 Filed 9–22–14; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–932]

Certain Steel Threaded Rod From the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Commerce.

SUMMARY: On May 29, 2014, the Department of Commerce (''the Department'') published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty (''AD'') order on certain steel threaded rod from the People's Republic of China (''PRC'') based on multiple timely requests for an administrative review. The review covers 92 companies. Based on a timely withdrawal of the requests for review of certain companies from Vulcan Threaded Products Inc. (''Petitioner''), we are now rescinding this administrative review with respect to 83 companies.

DATES: *Effective* September 23, 2014.

FOR FURTHER INFORMATION CONTACT: Julia Hancock or Jerry Huang, 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) 482–1394 or (202) 482–4047, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 14, 2009, the Department published in the **Federal Register** the AD order on certain steel threaded rod from the PRC.[1] On April 1, 2014, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the AD order on certain steel threaded rod.[2] The Department received multiple timely requests for an administrative review of the AD order on certain steel threaded rod and on May 29, 2014, in accordance with section 751(a) of the Tariff Act of 1930, as amended (''the Act''), the Department published in the **Federal Register** a notice of the initiation of an administrative review of that order.[3] The administrative review was initiated with respect to 92 companies or groups of companies, and covers the period from April 1, 2013, through March 31, 2014. On June 18, 2014, Petitioner withdrew its request for an administrative review on 83 companies.[4] While there are a number of companies which remain under review, the requesting parties timely withdrew all review requests for certain companies, as discussed below.

Rescission of Review, in Part

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. Petitioners withdrew their request for an administrative review of the 83 companies listed in the Appendix.[5] Petitioner was the only party to request a review of these companies. Accordingly, the Department is rescinding this review, in part, with respect to these entities, in accordance with 19 CFR 351.213(d)(1).[6]

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess ADs on all appropriate entries. For the companies for which this review is rescinded, ADs shall be assessed at rates equal to the cash deposit of estimated ADs required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification to Importers

This notice serves as the only reminder to importers for whom this review is being rescinded, as of the publication date of this notice, of their responsibility under 19 CFR

[1] *See Certain Steel Threaded Rod From the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 17154 (April 14, 2009).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 79 FR 18260 (April 1, 2014).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 79 FR 30809, 30813–14 (May 29, 2014).

[4] *See* Letter to the Department From Petitioner, Re: Fifth Administrative Review of Certain Steel Threaded Rod from China—Petitioner's Withdrawal of Review Requests for Specific Companies (June 18, 2014).

[5] The Department will no longer consider the NME entity as an exporter conditionally subject to administrative reviews. *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[6] *See* Appendix.

351.402(f)(2) to file a certificate regarding the reimbursement of ADs prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the ADs occurred and the subsequent assessment of double ADs.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751 and 777(i)(l) of the Act and 19 CFR 351.213(d)(4).

Dated: September 17, 2014.

Gary Taverman,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

- Aihua Holding Group Co. Ltd.
- Autocraft Industry (Shanghai) Ltd.
- Autocraft Industry Ltd.
- Billion Land Ltd.
- Bolt MFG. Trade Ltd.
- C and H International Corporation
- Certified Products International Inc.
- Changshu City Standard Parts Factory
- China Brother Holding Group Co. Ltd.
- China Friendly Nation Hardware Technology Limited
- EC International (Nantong) Co. Ltd.
- Fastwell Industry Co. Ltd.
- Fuda Xiongzhen Machinery Co., Ltd.
- Fuller Shanghai Co. Ltd.
- Haiyan Evergreen Standard Parts Co. Ltd.
- Haiyan Hurras Import & Export Co. Ltd.
- Haiyan Hurras Import Export Co. Ltd.
- Haiyan Jianhe Hardware Co. Ltd.
- Haiyan Julong Standard Part Co. Ltd
- Hangzhou Everbright Imp. & Exp. Co. Ltd.
- Hangzhou Grand Imp. & Exp. Co., Ltd.
- Hangzhou Great Imp. & Exp. Co. Ltd.
- Hangzhou Lizhan Hardware Co. Ltd.
- Hangzhou Tongwang Machinery Co., Ltd.
- Jiabao Trade Development Co. Ltd.
- Jiangsu Ronry Nico Co., Ltd.
- Jiangsu Yanfei Industrial Co., Ltd.
- Jiangsu Zhongweiyu Communication Equipment Co. Ltd.
- Jiashan Steelfit Trading Co. Ltd.
- Jiashan Zhongsheng Metal Products Co., Ltd.
- Jiaxing Xinyue Standard Part Co. Ltd.
- Jiaxing Yaoliang Import & Export Co. Ltd.
- Jinan Banghe Industry & Trade Co., Ltd.
- Macropower Industrial Inc.
- Nanjing Prosper Import & Export Corporation Ltd.
- Ningbiao Bolts & Nuts Manufacturing Co.
- Ningbo Beilun Milfast Metal Works Co. Ltd.
- Ningbo Beilun Pingxin Hardware Co., Ltd.
- Ningbo Dexin Fastener Co. Ltd.
- Ningbo Dongxin High-Strength Nut Co., Ltd.
- Ningbo Fastener Factory
- Ningbo Fengya Imp. And Exp. Co. Ltd.
- Ningbo Fourway Co., Ltd.
- Ningbo Haishu Holy Hardware Import and Export Co. Ltd.
- Ningbo Haishu Wit Import & Export Co. Ltd.
- Ningbo Haishu Yixie Import & Export Co. Ltd.
- Ningbo Jinding Fastening Pieces Co., Ltd.
- Ningbo MPF Manufacturing Co. Ltd.
- Ningbo Panxiang Imp. & Exp. Co. Ltd. (a/k/a Panxiang Imp. & Exp. Co., Ltd.)
- Ningbo Yinzhou Foreign Trade Co., Ltd.
- Ningbo Zhongjiang High Strength Bolts Co. Ltd.
- Ningbo Zhongjiang Petroleum Pipes & Machinery Co. Ltd.
- Orient International Holding Shanghai Rongheng Intl Trading Co. Ltd.
- Prosper Business and Industry Co., Ltd.
- Qingdao Free Trade Zone Health Intl.
- Qingdao Top Steel Industrial Co. Ltd.
- Shaanxi Succeed Trading Co., Ltd.
- Shanghai East Best Foreign Trade Co.
- Shanghai East Best International Business Development Co., Ltd.
- Shanghai Fortune International Co. Ltd.
- Shanghai Furen International Trading
- Shanghai Hunan Foreign Economic Co., Ltd.
- Shanghai Nanshi Foreign Economic Co.
- Shanghai Overseas International Trading Co. Ltd.
- Shanghai Prime Machinery Co. Ltd.
- Shanghai Printing & Dyeing and Knitting Mill
- Shanghai Printing & Packaging Machinery Corp.
- Shanghai Recky International Trading Co., Ltd.
- Shanghai Sinotex United Corp. Ltd.
- Suntec Industries Co., Ltd.
- Suzhou Henry International Trading Co., Ltd.
- T and C Fastener Co. Ltd.
- T and L Industry Co. Ltd.
- Wuxi Metec Metal Co. Ltd.
- Zhejiang Heiter Industries Co., Ltd.
- Zhejiang Heiter MFG & Trade Co. Ltd.
- Zhejiang Jin Zeen Fasteners Co. Ltd.
- Zhejiang Junyue Standard Part Co., Ltd.
- Zhejiang New Oriental Fastener Co., Ltd.
- Zhejiang Yanfei Industrial Co., Ltd.
- Zhejiang Zhenglian Corp.
- Zhejiang Zhenglian Industry Development Co, Ltd.
- Zhoushan Zhengyuan Standard Parts Co., Ltd.

[FR Doc. 2014–22624 Filed 9–22–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–940]

Tow Behind Lawn Groomers and Parts and Thereof From the People's Republic of China: Final Results of Sunset Review and Revocation of Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Commerce.

DATES: *Effective* September 23, 2014.

SUMMARY: On July 1, 2014, the Department of Commerce (the Department) initiated the first sunset review of the countervailing duty order on tow behind lawn groomers and parts from the People's Republic of China. *See Initiation of Five-Year (''Sunset'') Review, 79 FR 37292 (July 1, 2014) (Initiation).* Because the domestic interested parties did not participate in this sunset review, the Department is revoking the countervailing duty order.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith, 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) 482–5255.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 2009, the Department issued the countervailing duty order on tow-behind lawn groomers and parts from the People's Republic of China.[1] On July 1, 2014, the Department initiated the first sunset review of this order.[2] We did not receive a notice of intent to participate from domestic interested parties in this sunset review by the deadline date.[3] As a result, the Department determined that no domestic interested party intends to participate in the sunset review, and on July 21, 2014, we notified the International Trade Commission in writing that we did not receive a notice of intent to participate from domestic interested parties.

Scope of the Order

The scope of this order covers certain non-motorized tow behind lawn groomers, manufactured from any material, and certain parts thereof. Lawn

[1] *See Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Antidumping Duty Order,* 74 FR 38395 (August 3, 2009).

[2] *See Initiation.*

[3] *See* 19 CFR 351.218(d)(1)(iii)(A).

groomers are defined as lawn sweepers, aerators, dethatchers, and spreaders. Unless specifically excluded, lawn groomers that are designed to perform at least one of the functions listed above are included in the scope of this order, even if the lawn groomer is designed to perform additional non-subject functions (*e.g.,* mowing).

All lawn groomers are designed to incorporate a hitch, of any configuration, which allows the product to be towed behind a vehicle. Lawn groomers that are designed to incorporate both a hitch and a push handle, of any type, are also covered by the scope of this order. The hitch and handle may be permanently attached or removable, and they may be attached on opposite sides or on the same side of the lawn groomer. Lawn groomers designed to incorporate a hitch, but where the hitch is not attached to the lawn groomer, are also included in the scope of the order.

Lawn sweepers consist of a frame, as well as a series of brushes attached to an axle or shaft which allows the brushing component to rotate. Lawn sweepers also include a container (which is a receptacle into which debris swept from the lawn or turf is deposited) supported by the frame. Aerators consist of a frame, as well as an aerating component that is attached to an axle or shaft which allows the aerating component to rotate. The aerating component is made up of a set of knives fixed to a plate (known as a ''plug aerator''), a series of discs with protruding spikes (a ''spike aerator''), or any other configuration, that are designed to create holes or cavities in a lawn or turf surface. Dethatchers consist of a frame, as well as a series of tines designed to remove material (*e.g.,* dead grass or leaves) or other debris from the lawn or turf. The dethatcher tines are attached to and suspended from the frame. Lawn spreaders consist of a frame, as well as a hopper (*i.e.,* a container of any size, shape, or material) that holds a media to be spread on the lawn or turf. The media can be distributed by means of a rotating spreader plate that broadcasts the media (broadcast spreader), a rotating agitator that allows the media to be released at a consistent rate (drop spreader), or any other configuration.

Lawn dethatchers with a net fully-assembled weight (*i.e.,* without packing, additional weights, or accessories) of 100 pounds or less are covered by the scope of the order. Other lawn groomers—sweepers, aerators, and spreaders—with a net fully-assembled weight (*i.e.,* without packing, additional weights, or accessories) of 200 pounds or less are covered by the scope of the order.

Also included in the scope of the order are modular units, consisting of a chassis that is designed to incorporate a hitch, where the hitch may or may not be included, which allows modules that perform sweeping, aerating, dethatching, or spreading operations to be interchanged. Modular units—when imported with one or more lawn grooming modules—with a fully assembled net weight (*i.e.,* without packing, additional weights, or accessories) of 200 pounds or less when including a single module, are included in the scope of the order. Modular unit chassis, imported without a lawn grooming module and with a fully assembled net weight (*i.e.,* without packing, additional weights, or accessories) of 125 pounds or less, are also covered by the scope of the order. When imported separately, modules that are designed to perform subject lawn grooming functions (*i.e.,* sweeping, aerating, dethatching, or spreading), with a fully assembled net weight (*i.e.,* without packing, additional weights, or accessories) of 75 pounds or less, and that are imported with or without a hitch, are also covered by the scope.

Lawn groomers, assembled or unassembled, are covered by this order. For purposes of this order, ''unassembled lawn groomers'' consist of either (1) all parts necessary to make a fully assembled lawn groomer, or (2) any combination of parts, constituting a less than complete, unassembled lawn groomer, with a minimum of two of the following ''major components.''

(1) An assembled or unassembled brush housing designed to be used in a lawn sweeper, where a brush housing is defined as a component housing the brush assembly, and consisting of a wrapper which covers the brush assembly and two end plates attached to the wrapper;

(2) A sweeper brush;

(3) An aerator or dethatcher weight tray, or similar component designed to allow weights of any sort to be added to the unit;

(4) A spreader hopper;

(5) A rotating spreader plate or agitator, or other component designed for distributing media in a lawn spreader;

(6) Dethatcher tines;

(7) Aerator spikes, plugs, or other aerating component; or

(8) A hitch, defined as a complete hitch assembly comprising of at least the following two major hitch components, tubing and a hitch plate regardless of the absence of minor components such as pin or fasteners. Individual hitch component parts, such as tubing, hitch plates, pins or fasteners are not covered by the scope.

The major components or parts of lawn groomers that are individually covered by this order under the term ''certain parts thereof'' are: (1) Brush housings, where the wrapper and end plates incorporating the brush assembly may be individual pieces or a single piece; and (2) weight trays, or similar components designed to allow weights of any sort to be added to a dethatcher or an aerator unit.

The scope of this order specifically excludes the following: (1) Agricultural implements designed to work (*e.g.,* churn, burrow, till, *etc.*) soil, such as cultivators, harrows, and plows; (2) lawn or farm carts and wagons that do not groom lawns; (3) grooming products incorporating a motor or an engine for the purpose of operating and/or propelling the lawn groomer; (4) lawn groomers that are designed to be hand held or are designed to be attached directly to the frame of a vehicle, rather than towed; (5) ''push'' lawn grooming products that incorporate a push handle rather than a hitch, and which are designed solely to be manually operated; (6) dethatchers with a net assembled weight (*i.e.,* without packing, additional weights, or accessories) of more than 100 pounds, or lawn groomers—sweepers, aerators, and spreaders—with a net fully-assembled weight (*i.e.,* without packing, additional weights, or accessories) of more than 200 pounds; and (7) lawn rollers designed to flatten grass and turf, including lawn rollers which incorporate an aerator component (*e.g.,* ''drum-style'' spike aerators).

The lawn groomers that are the subject of this order are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting numbers 8432.40.0000, 8432.80.0000, 8432.80.0010, 8432.90.0030, 8432.90.0080, 8479.89.9896, 8479.89.9897, 8479.90.9496, and 9603.50.0000. These HTSUS provisions are given for reference and customs purposes only, and the description of merchandise is dispositive for determining the scope of the product included in this order.

Determination To Revoke

Pursuant to section 751(c)(3)(A) of the Act and 19 CFR 351.218(d)(1)(iii)(B)(3), if no domestic interested party files a notice of intent to participate, the Department shall, within 90 days after the initiation of the review, issue a final determination revoking the order. Because domestic interested parties did

not file a notice of intent to participate in this sunset review, the Department finds that no domestic party is participating in this sunset review. Therefore, consistent with 19 CFR 351.222(i)(2)(i) and section 751(d)(2) of the Act, we are revoking this countervailing duty order effective August 3, 2014, the fifth anniversary of the date the Department published the countervailing duty order.

Cash Deposit and Assessment of Duties

Pursuant to sections 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the Department will instruct U.S. Customs and Border Protection (CBP) to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse, on or after August 3, 2014. The Department intends to notify CBP 15 days after publication of this notice to terminate the suspension of liquidation and to discontinue the collection of cash deposits on entries of the subject merchandise, entered or withdrawn from warehouse, on or after August 3, 2014. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and countervailing duty deposit requirements. The Department will complete any pending administrative review of this order and conduct administrative review of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

The Department is issuing and publishing the final results and this notice in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: September 17, 2014.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–22631 Filed 9–22–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–801; A–588–804]

Ball Bearings and Parts Thereof From Japan and the United Kingdom: Preliminary Results of Antidumping Duty Administrative Review; 2010–2011

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting administrative reviews of the antidumping duty orders on ball bearings and parts thereof (ball bearings) from Japan and the United Kingdom. The period of review (POR) is May 1, 2010, through April 30, 2011. We preliminarily find that ball bearings from Japan and the United Kingdom have been sold at less than normal value during the POR. We are also rescinding the review with respect to certain producers/exporters.

DATES: *Effective:* September 23, 2014.

FOR FURTHER INFORMATION CONTACT: Michael Romani or Thomas Schauer, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0198 or (202) 482–0410, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department published the antidumping duty orders on ball bearings and parts thereof from Japan and the United Kingdom in the **Federal Register**.[1] On June 28, 2011, in accordance with 19 CFR 351.221(b), we published a notice of initiation of administrative reviews of 43 companies subject to these *Orders*.[2]

On July 15, 2011, pursuant to a decision of the Court of International Trade (CIT) that affirmed the International Trade Commission's (ITC's) negative injury determinations on remand in the second sunset review of the antidumping duty orders on bearings from Japan and the United Kingdom, the Department revoked the *Orders* and discontinued these administrative reviews.[3] On May 16, 2013, the United States Court of Appeals for the Federal Circuit (Federal Circuit) reversed the CIT's decision and ordered the CIT to reinstate the ITC's affirmative material injury determinations.[4] Subsequently, on November 18, 2013, the CIT issued final judgment reinstating the ITC's affirmative injury determinations.[5] As a result, the Department reinstated the *Orders* and resumed these administrative reviews.[6]

We rescinded the administrative review of ball bearings from Japan, in part,[7] for all firms for which we initiated a review except for Bosch Packaging Technology K.K., Bosch Rexroth Corporation, and Hagglunds Ltd.[8]

Scope of the Orders

The products covered by the *Orders* are ball bearings and parts thereof. The product is currently classified under the Harmonized Tariff Schedules of the United States (HTSUS) item numbers 3926.90.45, 4016.93.10, 4016.93.50, 6909.19.50.10, 8414.90.41.75, 8431.20.00, 8431.39.00.10, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.35, 8482.99.25.80, 8482.99.65.95, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.93.30, 8708.93.60.00, 8708.99.06, 8708.99.31.00, 8708.99.40.00, 8708.99.49.60, 8708.99.58, 8708.99.80.15, 8708.99.80.80, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90, 8708.30.50.90, 8708.40.75.70, 8708.40.75.80, 8708.50.79.00, 8708.50.89.00, 8708.50.91.50, 8708.50.99.00, 8708.70.60.60, 8708.80.65.90, 8708.93.75.00, 8708.94.75, 8708.95.20.00, 8708.99.55.00, 8708.99.68, and 8708.99.81.80. The HTSUS subheading is provided for convenience and customs purposes. A full description of the scope of the orders is contained in the Preliminary

[1] *See Antidumping Duty Orders: Ball Bearings, Cylindrical Roller Bearings, and Spherical Plain Bearings, and Parts Thereof From Japan,* 54 FR 20904 (May 15, 1989) and *Antidumping Duty Orders and Amendments to the Final Determinations of Sales at Less Than Fair Value: Ball Bearings, and Cylindrical Roller Bearings and Parts Thereof From the United Kingdom,* 54 FR 20910 (May 15, 1989) (collectively, *Orders*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 76 FR 37781 (June 28, 2011).

[3] *See Ball Bearings and Parts Thereof From Japan and the United Kingdom: Revocation of Antidumping Duty Orders*, 76 FR 41761 (July 15, 2011) (*Revocation Notice*).

[4] *NSK Corp v. United States International Trade Commission,* 716 F.3d 1352 (Fed. Cir. 2013) (*NSK May 2013*).

[5] *NSK Corp. v. United States International Trade Commission,* Court No. 06–334, Slip Op. 2013–143 (CIT November 18, 2013) (*NSK November 2013*).

[6] *See Ball Bearings and Parts Thereof From Japan and the United Kingdom: Notice of Reinstatement of Antidumping Duty Orders, Resumption of Administrative Reviews, and Advance Notification of Sunset Reviews,* 78 FR 76104 (December 16, 2013) (*Reinstatement Notice*).

[7] *See Ball Bearings and Parts Thereof From Japan: Rescission of Antidumping Duty Administrative Review, in Part; 2010–2011,* 79 FR 26405 (May 8, 2014); *see also Ball Bearings and Parts Thereof From Japan: Amended Rescission of Antidumping Duty Administrative Review, in Part; 2010–2011,* 79 FR 32693 (June 6, 2014).

[8] Even though these three companies provided joint submissions as affiliates of Robert Bosch LLC, the Department has made no determination whether these three companies should be considered as a single entity.

Decision Memorandum.[9] The written description is dispositive.

Rescission of Review in Part

In accordance with 19 CFR 351.213(d), the Department will rescind an administrative review in part ''if a party that requested a review withdraws the request within 90 days of the date of the publication of notice of initiation of the requested review.'' Subsequent to the initiation of the review with respect to the United Kingdom, we received timely withdrawals of the requests we had received for the review of SKF (UK) Limited SNFA Operations and SKF UK Limited Stonehouse Operations. Because there are no other requests for review of these firms, we are rescinding the review with respect to these companies in accordance with 19 CFR 351.213(d)(1).

Methodology

The Department conducted these administrative reviews in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). Constructed export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. The Department has determined the weighted-average dumping margins for Bayerische Motoren Werke AG in the administrative review concerning ball bearings from the United Kingdom, and Bosch Packaging Technology K.K., Bosch Rexroth Corporation and Hagglunds Ltd. in the administrative review concerning ball bearings from Japan based on facts otherwise available with an adverse inference pursuant to section 776 of the Act. For the remaining respondents in the administrative review concerning ball bearings from the United Kingdom, the Department based the weighted-average dumping margins on the rate that it calculated for NSK Bearings Europe Ltd. and NSK Europe Ltd. (collectively, NSK). For a full description of the methodology underlying our conclusions, *see* Preliminary Decision Memorandum.

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). Access to IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the 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.

Preliminary Results of the Reviews

As a result of these reviews, we preliminarily determine that the following weighted-average dumping margins on ball bearings from Japan and the United Kingdom exist for the period May 1, 2010, through April 30, 2011:

Company	Weighted-Average Dumping Margin (percent)
Japan	
Bosch Packaging Technology K.K.	106.61
Bosch Rexroth Corporation	106.61
Hagglunds Ltd.	106.61
United Kingdom	
Bayerische Motoren Werke AG	254.25
Bosch Rexroth Limited	1.55
Caterpillar S.A.R.L.	1.55
Caterpillar Group Services S.A.	1.55
Caterpillar of Australia Pty Ltd.	1.55
Caterpillar Overseas S.A.R.L.	1.55
Caterpillar Marine Power UK	1.55
NSK	1.55
Perkins Engines Company Ltd.	1.55

Disclosure and Public Comment

We intend to disclose the calculations performed to parties to these proceedings 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 not 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.[10] 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.[11]

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. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. 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 these administrative reviews, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative reviews, the Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), for NSK we calculated an importer-specific assessment rate by dividing the total amount of dumping for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct CBP to assess the resulting assessment rate against the entered customs values for the subject merchandise on each of that importer's entries during the review period.[12]

For entries of subject merchandise during the POR produced by NSK for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

For the companies which were not selected for individual examination and for the companies to which we are applying adverse facts available, we will instruct CBP to apply the rates listed

[9] *See* memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Ball Bearings and Parts Thereof from the United Kingdom and Japan'' dated concurrently with this notice (Preliminary Decision Memorandum), which is hereby adopted by this notice.

[10] *See* 19 CFR 351.309(d).

[11] *See* 19 CFR 351.309(c)(2) and (d)(2).

[12] *See* 19 CFR 351.212(b).

above to all entries of subject merchandise produced and/or exported by such firms.

We intend to issue instructions to CBP 15 days after publication of the final results of these administrative reviews.

Cash Deposit Requirements

Because the antidumping duty orders on ball bearings from Japan and the United Kingdom have been revoked,[13] the Department will not issue cash deposit instructions at the conclusion of these administrative reviews.

Notification to Importers

This notice 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 Secretary'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: September 17, 2014.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

Summary
Background
Scope of the Orders Rescission in Part
Continuation of Administrative Review of Bosch Packaging Technology K.K., Bosch Rexroth Corporation, and Hagglunds Ltd. (Japan)
Selection of Respondents
Non-Selected Respondents
Use of Facts Otherwise Available
A. Use of Facts Available
B. Application of Adverse Inferences for Facts Available
C. Selection and Corroboration of Information Used as Facts Available
Comparisons to Normal Value
A. Determination of Comparison Method
B. Results of the Differential Pricing Analysis
Product Comparisons
Date of Sale
Constructed Export Price
Normal Value
A. Home Market Viability as Comparison Market
B. Level of Trade
C. Calculation of Normal Value Based on Comparison Market Prices
D. Calculation of Normal Value Based on Constructed Value
E. Cost of Production
1. Calculation of Cost of Production
2. Test of Comparison-Market Sales Prices
3. Results of the COP Test
Currency Conversion
Recommendation

[FR Doc. 2014–22628 Filed 9–22–14; 8:45 am]

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[13] *See Ball Bearings and Parts Thereof From Japan and the United Kingdom: Final Results of Sunset Reviews and Revocation of Antidumping Duty Orders,* 79 FR 16771 (March 26, 2014).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From the People's Republic of China: Notice of Court Decision Not in Harmony With the Final Results of Antidumping Duty Administrative Review and Notice of Amended Final Results Pursuant to Court Decision; 2010–2011

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On August 19, 2014, the United States Court of International Trade (''CIT'' or ''Court'') sustained the Department of Commerce's (the ''Department'') results of redetermination, pursuant to the CIT's remand order, in *The Timken Company* v. *United States and Changshan Peer Bearing Co., Ltd. and Peer Bearing Company,* Slip Op. 2014–97 (CIT August 19, 2014), concerning the final results of the antidumping duty administrative review for tapered roller bearings and parts thereof, finished and unfinished from the People's Republic of China (''PRC'') for the period of review June 1, 2010 to May 31, 2011.[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 *Amended Final Results,* and it is amending the *Amended Final Results* with respect to Changshan Peer Bearing Co., Ltd.

DATES: *Effective:* August 29, 2014.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0182.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 2013, the Department published the *Amended Final Results.* One Chinese exporter of tapered roller bearings from the PRC, Changshan Peer Bearing Co., Ltd., appealed the Department's *Amended Final Results* to the CIT, and on May 2, 2014, the Court granted the Department's request for a voluntary remand to reexamine the alleged currency conversion error in Changshan Peer Bearing Co., Ltd.'s reported further manufacturing costs.[2] After reexamining Changshan Peer Bearing Co., Ltd.'s further manufacturing costs, the Department determined that the further manufacturing costs were reported in Thai baht (not U.S. dollars) and therefore required conversion into U.S. dollars. On August 19, 2014, the CIT affirmed the Department's *TRBs Final Remand,* which resulted in a weighted-average dumping margin of 0.00% for Changshan Peer Bearing Co., Ltd.

Timken Notice

In its decision in *Timken,* 893 F.2d at 341, 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 August 19, 2014 judgment sustaining the *TRBs Final Remand* constitutes a final decision of that court that is not in harmony with the *Amended Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

Because there is now a final court decision with respect to this litigation, the Department is amending its

[1] *See* Final Results of Redetermination Pursuant to Court Remand, Court No. 13–00069, Slip Op. 14–97, dated June 12, 2014, available at: *http://enforcement.trade.gov/remands/index.html* (''*TRBs Final Remand*''); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2010–2011,* 78 FR 12035 (February 21, 2013) (''*Amended Final Results*'').

[2] *See The Timken Company* v. *United States and Changshan Peer Bearing Co., Ltd. and Peer Bearing Company,* Slip Op. 2014–51 (CIT May 2, 2014).

Amended Final Results with respect to Changshan Peer Bearing Co., Ltd.'s weighted-average dumping margin. The revised weighted-average dumping margin for the period June 1, 2010 to May 31, 2011, for Changshan Peer Bearing Co., Ltd. is 0.00%.

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the Court's ruling is not appealed, or if appealed and upheld by the Federal Circuit, the Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of the subject merchandise exported by Changshan Peer Bearing Co., Ltd. using the revised assessment rate calculated by the Department in the *Remand Results* and listed above.

Cash Deposit Requirements

Since the *Amended Final Results,* the Department has established a new cash deposit rate for Changshan Peer Bearing Co., Ltd.[3] Therefore, Changshan Peer Bearing Co., Ltd.'s cash deposit rate does not need to be updated as a result of these amended final results. The cash deposit rate for Changshan Peer Bearing Co., Ltd. will remain the rate established for the subsequent and most-recent period during which Changshan Peer Bearing Co., Ltd. was reviewed.

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: September 17, 2014.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–22627 Filed 9–22–14; 8:45 am]

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[3] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the 2011–2012 Antidumping Duty Administrative Review and New Shipper Reviews,* 79 FR 4327 (January 27, 2014).

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Open Meeting of the Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, October 22, 2014, from 8:30 a.m. until 5:00 p.m. Eastern Time, Thursday, October 23, 2014, from 8:30 a.m. until 5:00 p.m. Eastern Time, and Friday, October 24, 2014, from 8:30 a.m. until 12:00 p.m. Eastern Time. All sessions will be open to the public.

DATES: The meeting will be held on Wednesday, October 22, 2014, from 8:30 a.m. until 5:00 p.m. Eastern Time, Thursday, October 23, 2014, from 8:30 a.m. until 5:00 p.m. Eastern Time, and Friday, October 24, 2014, from 8:30 a.m. until 12:00 p.m. Eastern Time.

ADDRESSES: The meeting will take place at the United States Access Board Conference Room, 1331 F Street NW., Suite 800, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Annie Sokol, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–2006, or by email at: *annie.sokol@nist.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, October 22, 2014, from 8:30 a.m. until 5:00 p.m. Eastern Time, Thursday, October 23, 2014, from 8:30 a.m. until 5:00 p.m. Eastern Time, and Friday, October 24, 2014, from 8:30 a.m. until 12:00 p.m. Eastern Time. All sessions will be open to the public. The ISPAB is authorized by 15 U.S.C. 278g–4, as amended, and advises the National Institute of Standards and Technology (NIST), and the Director of the Office of Management and Budget (OMB) on information security and privacy issues pertaining to Federal government information systems, including thorough review of proposed standards and guidelines developed by NIST. Details regarding the ISPAB's activities are available at *http://csrc.nist.gov/groups/SMA/ispab/index.html.*

The agenda is expected to include the following items:

—Discussion on cloud geolocation and privacy,

—Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act (FISA), 50 U.S.C. 1881a, from the Privacy and Civil Liberties Oversight Board,

—Discussion on Continuous Monitoring and Continuous Diagnostics and Mitigation (CDM),

—Discussion on security, privacy and processes on meaningful use healthcare technology,

—Presentation on drones and privacy,

—Presentation on Mutual Legal Assistance Treaties (MLATs) in relation to intelligence and communication technologies,

—Discussion on mobile devices and protection of sensitive information,

—Updates on NIST Privacy Engineering Workshop,

—Updates on Federal Risk and Authorization Management Program (FedRAMP),

—Discussion on safeguarding health information,

—Discussion on NIST Visiting Committee on Advanced Technology Report on NIST Cryptographic Standards and Guidelines Development Process *http://www.nist.gov/director/vcat/cryptographic-standards-guidelines-process.cfm,* and

—Update on NIST Computer Security Division.

Note that agenda items may change without notice. The final agenda will be posted on the Web site indicated above. Seating will be available for the public and media. No registration is required to attend this meeting.

Public Participation: The ISPAB agenda will include a period of time, not to exceed thirty minutes, for oral comments from the public (Friday, October 24, 2014, between 10:00 a.m. and 10:30 a.m.). Speakers will be selected on a first-come, first-served basis. Each speaker will be limited to five minutes. Questions from the public will not be considered during this period. Members of the public who are interested in speaking are requested to contact Annie Sokol at the contact information indicated in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements. In addition, written statements are invited and may be submitted to the ISPAB at any time. All written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930.

Dated: September 17, 2014.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2014–22623 Filed 9–22–14; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Alaska Chinook Salmon Economic Data Report (EDR)

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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.

DATES: Written comments must be submitted on or before November 24, 2014.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, (907) 586–7008, or *patsy.bearden@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

National Marine Fisheries Service (NMFS), Alaska Region manages the groundfish fisheries in the Exclusive Economic Zone off Alaska. The North Pacific Fishery Management Council (Council) prepared the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson-Stevens Act). The FMP is implemented under regulations at 50 CFR part 679.

NMFS manages the Bering Sea pollock fishery under the American Fisheries Act (AFA) (16 U.S.C. 1851). The AFA ''rationalized'' the Bering Sea pollock fishery in part by allowing for the formation and management of fishery cooperatives. AFA fishing vessels harvest pollock using pelagic (mid-water) trawl gear, which consists of large nets towed through the water by the vessel. At times, Chinook salmon and pollock occur in the same locations in the Bering Sea. Consequently, Chinook salmon are incidentally caught in the nets as pollock is harvested. This incidental catch is called bycatch and is also called prohibited species catch (PSC). Chinook Salmon are defined as a prohibited species because they are caught by a vessel issued a Federal Fisheries Permit under § 679.4(b) while fishing for groundfish (pollock) in the Bering Sea and Aleutian Islands Management Area (BSAI) or Gulf of Alaska.

In December 2009, the Council recommended that NMFS implement the Chinook Salmon Economic Data Report (Chinook Salmon EDR) to evaluate the effectiveness of Chinook salmon bycatch management measures for the Bering Sea pollock fishery that were implemented under Amendment 91 to the BSAI FMP (75 FR 53026, August 30, 2010).

The Chinook EDR Program provides information to the analysts and the Council for determining the effectiveness of the Incentive Plan Agreement (IPA). The Chinook EDR Program evaluates the effectiveness of the IPA incentives, the PSC limits, and the performance standard in terms of minimizing salmon bycatch in times of high and low levels of salmon abundance, and evaluates how Amendment 91 affects where, when, and how pollock fishing and salmon bycatch occur. The data collection program also provides data for NMFS and the Council to study and verify conclusions drawn by industry in the IPA annual reports.

II. Method of Collection

Attachment to email, electronically (Internet), fax, or mail.

III. Data

OMB Control Number: 0648–0633.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households; business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time Per Response: 40 hours for Compensated Transfer Report; 4 hours each for Vessel Fuel Survey, Vessel Master Survey; and Chinook EDR Verification/Audit.

Estimated Total Annual Burden Hours: 9,976.

Estimated Total Annual Cost to Public: $25,958.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 17, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–22511 Filed 9–22–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Estuarine Research Reserve System

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of approval of the Waquoit Bay, Massachusetts National Estuarine Research Reserve Management Plan Revision.

SUMMARY: Notice is hereby given that the Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce approves the Waquoit Bay, Massachusetts National Estuarine Research Reserve Management Plan revision. The revised management plan outlines the administrative structure; the research, education, training, and stewardship goals of the reserve; and the plans for future land acquisition and facility development to support reserve operations. The Waquoit Bay Reserve Management Plan revision will replace the plan approved in 2006.

The Waquoit Bay, Massachusetts National Estuarine Research Reserve takes an integrated approach to

management, linking research, education, training, and stewardship functions to address high-priority issues, including the impact of climate change on estuarine ecosystems; connections between watershed land use and water quality; assessment of ecosystem response to natural variability and human impacts; and understanding and enhancing ecosystem services of coastal habitats. Since the last management plan, the reserve implemented its core programs, expanded its monitoring infrastructure to establish a groundwater monitoring program and a Salt Marsh Observatory; enhanced its facilities with energy efficiency installations, campus building improvements, and updated educational exhibits; and furthered land conservation in the reserve's watershed.

This management plan includes a boundary expansion of 23 acres. The lands consist of the 11.4-acre Caleb Pond parcel on the northeast corner of Waquoit Bay as well as the addition of 12.4 acres to the Quashnet River lands. The Caleb Pond parcel is the largest single undeveloped parcel on Waquoit Bay and contains an upland coastal pine-oak forest habitat with fringing salt marsh and a connecting stream that contains diadromous fish runs of American eel and has historically supported an anadromous river herring run. The parcel is especially suitable for educational purposes and creates 40 acres of contiguous protected lands across the head of Waquoit Bay. The Quashnet River land parcel expands important contiguous and unfragmented habitat that is valuable as wildlife habitat and corridor, as well as increases protection of terrestrial, groundwater, and aquatic systems. This parcel is appropriate for education, recreation, and upland research purposes.

The revised management plan will serve as the guiding document for the 2,804 acre Waquoit Bay National Estuarine Research Reserve for the next five years. The Waquoit Bay National Estuarine Research Reserve Management Plan revision can be viewed at *http://www.waquoitbayreserve.org/about/management-plan/*. Comments can be provided to the reserve manager at *waquoit.bay@state.ma.us.*

FOR FURTHER INFORMATION CONTACT: Alison Krepp at (301) 563–7105 or Erica Seiden at (301) 563–1172 of NOAA's National Ocean Service, Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, 10th Floor, Silver Spring, MD 20910.

Dated: September 16, 2014.

Donna Rivelli,

Deputy Chief Financial Officer, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2014–22589 Filed 9–22–14; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2014–0031]

Extension of Period for Comments on Trial Proceedings Under the America Invents Act Before the Patent Trial and Appeal Board

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for comments; extension of comment period.

SUMMARY: The Leahy-Smith America Invents Act (AIA) provided for new administrative trial proceedings before the Patent Trial and Appeal Board (Board). The United States Patent and Trademark Office (USPTO) issued a number of final rules and a trial practice guide in August and September of 2012 to implement the new administrative trial provisions of the AIA. The USPTO published a request for comments in the **Federal Register** on June 27, 2014, seeking public comment on all aspects of the new administrative trial proceedings, including the administrative trial proceeding rules and trial practice guide. The USPTO is now extending the period for public comment until October 16, 2014.

DATES: *Comment Deadline Date:* Written comments must be received on or before October 16, 2014.

ADDRESSES: Comments must be sent by electronic mail message over the Internet addressed to: *TrialsRFC2014@uspto.gov.*

Electronic comments submitted in plain text are preferred, but also may be submitted in ADOBE® portable document format or Microsoft Word® format. The comments will be available for viewing via the USPTO's Internet Web site (*http://www.uspto.gov*). Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Scott R. Boalick, Vice Chief Administrative Patent Judge, Patent Trial and Appeal Board, at 571–272–8138.

SUPPLEMENTARY INFORMATION: Sections 3, 6, and 18 of the AIA provided for the following new Board administrative trial proceedings: (1) *Inter partes* review; (2) post-grant review; (3) covered business method patents review; and (4) derivation proceedings. Pub. L. 112–29, 125 Stat. 284 (2011). The USPTO issued a number of final rules and a trial practice guide in August and September of 2012 to implement the new administrative trial provisions of the AIA. *See Rules of Practice for Trials Before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions,* 77 FR 48612 (Aug. 14, 2012) (final rule); *Changes to Implement Inter Partes Review Proceedings, Post-Grant Review Proceedings, and Transitional Program for Covered Business Method Patents,* 77 FR 48680 (Aug. 14, 2012) (final rule); *Transitional Program for Covered Business Method Patents—Definitions of Covered Business Method Patent and Technological Invention,* 77 FR 48734 (Aug. 14, 2012) (final rule); *Changes to Implement Derivation Proceedings,* 77 FR 56068 (Sept. 11, 2012) (final rule); and *Office Patent Trial Practice Guide,* 77 FR 48756 (Aug. 14, 2012).

In issuing the administrative trial proceeding rules and trial practice guide, the USPTO committed to revisiting the rules and practice guide once the Board and public had operated under the rules and practice guide for some period and had gained experience with the new administrative trial proceedings. The USPTO began the process of revisiting the AIA administrative trial proceeding rules and trial practice guide by engaging in a nation-wide listening tour. The USPTO conducted a series of roundtables in April and May of 2014, held in Alexandria, New York City, Chicago, Detroit, Silicon Valley, Seattle, Dallas, and Denver, to share information concerning the AIA administrative trial proceedings with the public and obtain public feedback on these proceedings. The USPTO also published a request for comments in the **Federal Register** on June 27, 2014, seeking public comment on all aspects of the new administrative trial proceedings, including the administrative trial proceeding rules and trial practice guide. *See Request for Comments on Trial Proceedings Under the America Invents Act Before the Patent Trial and Appeal Board,* 79 FR 36474–77 (June 27, 2014). The request for comments indicated that written comments must be received on or before September 16, 2014. *See id.* at 36474. In view of stakeholder requests for

additional time to submit comments on the new administrative trial proceedings, the USPTO is now extending the period for public comment until October 16, 2014.

Dated: September 17, 2014.

Michelle K. Lee,

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

[FR Doc. 2014–22695 Filed 9–22–14; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2012–0048]

Request for Information Regarding Passenger Use of ATVs

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) is issuing a notice seeking information from the public on the prevalence of carrying passengers on all-terrain vehicles (ATVs) and the feasibility of a performance requirement that would prevent passengers from being carried on ATVs.

DATES: Written comments must be submitted by November 24, 2014.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2012–0048 by any of the following methods:

Electronic Submissions: Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (email) except through *http://www.regulations.gov.*

Written Submissions: Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions) preferably in five copies, to: Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. Do not submit confidential business information, trade secret information, or other sensitive or protected information (such as a Social Security Number) electronically; if furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Hope Nesteruk, Project Manager, Directorate for Engineering Sciences, U.S. Consumer Product Safety Commission, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850, 301–987–2579; email: *hnesteruk@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Since the 1980s, the CPSC has addressed ATV safety through various activities, including rulemaking, recalls, consumer education, media outreach following fatal incidents, and litigation. Despite these activities, ATV-related fatalities continue to be one of the largest categories of consumer product-related deaths. ATV safety, therefore, remains an ongoing Commission concern. Most recently, to assess the impact of passenger use of ATVs, the Commission Fiscal Year 2014 Operating Plan tasked CPSC staff with ''assessing the inclusion of a performance standard related to preventing passengers on ATVs'' in the Commission's open rulemaking on ATVs. Accordingly, this request for information (RFI) seeks information from stakeholders related to passenger use of ATVs. CPSC staff will use information gathered from this RFI to assist in developing recommended courses of action for Commission consideration as to whether a performance requirement to prevent passenger use of ATVs is appropriate. Interested parties may provide information on the prevalence of passenger use and the reasons why passengers ride on ATVs; potential means of preventing passengers from being carried on ATVs not intended for that purpose; and potential impacts of these requirements on the utility of ATVs. Interested parties also may provide information on possible changes to ATV design that may prevent passenger use, and information on whether these changes could be translated into a performance standard.

II. Background

A. ATV-Related Activities Since 2006

In October 2005, the Commission published in the **Federal Register** an advance notice of proposed rulemaking (ANPR) for ATVs under the Consumer Product Safety Act (CPSA) and the Federal Hazardous Substances Act (FHSA). Subsequently, in August 2006, the Commission issued a notice of proposed rulemaking (NPR) that proposed:

- Informational and training requirements for four-wheeled, adult, single-rider and tandem ATVs;
- Technical performance requirements for four-wheeled, adult, single-rider and tandem ATVs;
- Technical requirements for four-wheeled, youth ATVs; and
- A ban of three-wheeled ATVs.

The 2006 NPR also directed staff to address eight questions concerning youth ATVs and four questions concerning ATVs generally.

Since the 2006 NPR on ATVs was issued, the U.S. Congress, the Commission, and the Specialty Vehicle Institute of America (SVIA), have all been actively involved in ATV safety efforts. For example, SVIA revised the voluntary standard twice, and CPSC staff conducted research and completed studies to respond to the Commission's questions in the NPR. Most significantly, Congress passed the Consumer Product Safety Improvement Act of 2008 (CPSIA) in August 2008. Among other things, section 232 of the CPSIA:

- Required the Commission to make mandatory the voluntary standard for ATVs, the American National Standard for Four Wheel All-Terrain Vehicles Equipment Configuration, and Performance Requirements, developed by the SVIA (ANSI/SVIA–1–2007);
- Made it unlawful for a manufacturer or distributor to import or distribute an ATV that did not comply with the mandated ATV standard and with action plans required by the CPSIA;
- Banned three-wheel ATVs until a mandatory standard is promulgated; and
- Required the Commission to issue a final rule on ATVs stemming from the 2006 NPR.

The Commission adopted the voluntary standard as a mandatory standard in a final rule on ATVs in the **Federal Register** on November 14, 2008 (73 FR 67385). The Commission's ATV regulation is codified at 16 CFR part 1420 (part 1420) and became effective on April 13, 2009.

In 2011, Congress directed [1] the Commission to issue a final rule by August 12, 2012, stemming from the 2006 NPR. However, six years had passed since the NPR. Furthermore,

[1] Section 9 of Public Law 112–28 (August 12, 2011).

many of the proposed requirements in the 2006 NPR were addressed by the combination of part 1420 and mandatory action plans. Taken together, these requirements addressed, in part or in whole, the majority of the safety measures that the Commission proposed in the 2006 NPR. Thus, the Commission voted to host an ATV Safety Summit to ''provide stakeholders an opportunity to present their views on the outstanding issues'' related to ATV safety, in addition to providing a forum for stakeholders to discuss new innovations in ATV safety. The Commission held the ATV Safety Summit on October 11 and 12, 2012, and accepted comments through November 14, 2012. A summary of these comments is available on CPSC's Web site.[2]

Most recently, the Commission's Fiscal Year 2014 Operating Plan directed staff to perform six activities, as resources permit, in preparation for a draft NPR on ATVs. The six activities:

1. Consulting with the National Highway Traffic Safety Administration regarding the categorization of youth ATVs, as well as the establishment of additional safety standards for ATVs.

2. Assessing the inclusion in the NPR of a performance standard related to preventing passengers on ATVs.

3. Contracting for further testing of a child-resistant ATV ignition prototype device.

4. Conducting a literature review and develop a testing strategy to evaluate steering and stability issues related to ATVs.

5. Conducting a literature review and analysis regarding roll-over protection systems for ATVs.

6. Conducting an ATV off-road exposure survey (the first year of a 3-year effort).

CPSC staff now seeks input from stakeholders related to item 2. Specifically, staff seeks information on the prevalence of passengers riding on ATVs and the feasibility of establishing a performance requirement that would prevent or reduce the likelihood of passengers riding on an ATV. For example, a performance requirement could prevent an ATV from being able to carry a passenger on a seat or cargo rack. Note, however, that any law or regulation aimed at changing consumer use of ATVs, such as a law to prohibit ATV use by passengers, would need to be addressed at the state level.

[2] *http://cpsc.gov/PageFiles/26/Regulations,%20Laws%20Standards/Rulemaking/ATVs/Final%20ReportATVSafetySummitfinal.pdf.*

B. CPSC Staff Activities Related to ATV Passenger Use ATV-Related Activities Since 2006

In the 2014 fiscal year, CPSC staff conducted a pilot study analyzing several characteristics of passenger-involved fatality incidents for presentation to the Commission. By analyzing ATV fatality data, staff's pilot study was intended to determine: (1) If specific passenger locations on the ATV are associated with more fatal incidents; and (2) if and how passengers affect ATV-related fatal incidents. The pilot study was intended to assist the Commission in deciding whether to devote additional resources to the development of a performance standard for passenger use of ATVs.

To date, CPSC staff's review of incident reports and other studies demonstrates that passengers ride in various locations on the ATV, *e.g.,* cargo rack and seat, and in front of and behind the operator. CPSC staff's special study on ATV-related deaths and emergency department-treated injuries [3] shows that passengers comprise about 25 percent of injured victims. From 2005 through 2007, about 25 percent of fatalities involved ATVs with multiple riders; however, a passenger was the victim in slightly less than half of those fatalities with multiple riders, meaning that about 10 percent of fatalities are to a passenger of an ATV. In addition, the recent pilot study of ATV-related fatalities [4] found that of 502 reported incidents with more than one rider on the ATV, more than 80 percent involved two riders: a driver and a passenger. Of those, about half involved both riders on the seat of the ATV,[5] and the driver was more likely to be fatally injured than the passenger. Around 10 percent of passenger-related fatal incidents involved more than two riders (*i.e.,* a driver and two or more passengers). When two or more passengers were involved, a passenger was more likely to be fatally injured.

III. Information Requested

This RFI is intended to supplement staff's pilot study to gather information from the public on the prevalence of carrying passengers on ATVs and the feasibility of a performance requirement that would prevent passengers from being carried on ATVs. CPSC staff's data analysis can only quantify passenger location in fatal incidents. Staff's data do not provide information on passenger location during normal, non-incident use. In addition, CPSC data contain little information about aftermarket use of passenger seats or information about the need of ATV drivers to carry passengers. Accordingly, CPSC staff seeks data and information concerning three main topic areas: (1) The prevalence of passengers riding ATVs; (2) the purchase and use of aftermarket seats; and (3) the feasibility of a performance standard that would reduce or eliminate carrying passengers on ATVs. Commenters are encouraged to answer as few or as many of the following questions as they wish.

A. Prevalence of Passenger Riding

- What, if any, data are available regarding the location of ATV passengers when riding? That is, where are passengers sitting or standing when riding ATVs? CPSC's data are limited to information related to injury and fatality incidents but does not provide information regarding ATV use when an incident does not occur.
- What, if any, data are available regarding the frequency and duration of passengers riding on ATVs that are not intended to carry more than one rider? Is the frequency and duration of passengers riding on ATVs associated with the type of ATV use, *e.g.,* trail riding, versus utility use, versus hunting use? What, if any, data are available regarding the frequency and duration of drivers alone riding on ATVs that are not intended to carry more than one rider?
- What, if any, data are available regarding why ATV drivers carry passengers and the reasons passengers ride ATVs?
- What, if any, data are available regarding user demand for two-rider ATVs, also called Tandem, 2-Up, or Type II ATVs?
- Other than the data from CPSC sources, (*e.g.,* reports and databases), what, if any, data are available regarding injury or risk of injury associated with passenger use of ATVs on single-rider versus tandem ATVs? This includes, but is not limited to, data about the mechanism of driver and passenger injuries, the disposition of drivers and passengers, interactions between the driver and passenger in incidents, weight of driver and passengers, helmet use of drivers and passengers, age/gender of the driver and passengers, and sequence of events in incidents with passengers.

[3] *http://www.cpsc.gov//Global/Research-and-Statistics/Injury-Statistics/Sports-and-Recreation/ATVs/ATVSpecialStudyReport.pdf.*

[4] *http://www.cpsc.gov//Global/Research-and-Statistics/Injury-Statistics/Sports-and-Recreation/ATVs/ATVPassengerPilotStudyReport.pdf.*

[5] A large number of reported incidents did not have enough information available to determine exactly where the passenger was in relation to the driver.

B. Aftermarket Seats

Aftermarket seats generally attach to cargo racks and are generally marketed as being intended for use when the ATV is not moving.

• What, if any, data are available regarding use of aftermarket seats by passengers when the ATV is moving?

• What, if any, data are available regarding injury or risk of injury associated with the use of aftermarket seats?

C. Feasibility

• Can design modifications be made to ATVs to prevent passengers?

• If design modifications are feasible, please describe possible design changes that could prevent passengers. How could such modifications affect the usability or utility of the ATV? Although CPSC cannot mandate a specific design, information regarding proof-of-concept designs can inform decision making regarding the feasibility of a performance requirement.

• Would it be feasible to establish a performance standard that would prevent consumers from carrying passengers or installing aftermarket seats capable of carrying passengers without significantly adversely affecting the usability or utility of the ATV for purposes other than carrying passengers?

• How would a performance requirement to prevent passenger use of ATVs affect two-rider ATVs, also called Tandem, 2-Up, or Type II ATVs? Should such a requirement apply to two-rider ATVs?

Dated: September 18, 2014.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2014–22556 Filed 9–22–14; 8:45 am]

BILLING CODE 6355–01–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 2014–1]

Emergency Preparedness and Response

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice, recommendation.

SUMMARY: Pursuant to 42 U.S.C. 2286a(b)(5), the Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy concerning the need to take actions to improve the emergency preparedness and response capability at the Department of Energy's (DOE) defense nuclear facilities.

DATES: Comments, data, views, or arguments concerning the recommendation are due on or before October 23, 2014.

ADDRESSES: Send comments concerning this notice to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004–2001.

FOR FURTHER INFORMATION CONTACT: Andrew L. Thibadeau at the address above or telephone number (202) 694–7000.

Dated: September 17, 2014.

Peter S. Winokur, Ph.D.,

Chairman.

Recommendation 2014–1 to the Secretary of Energy

Emergency Preparedness and Response

Pursuant to 42 U.S.C. § 2286d(a)(3)

Atomic Energy Act of 1954, As Amended

Dated: September 2, 2014

The need for a strong emergency preparedness and response program to protect the public and workers at the Department of Energy's (DOE) defense nuclear facilities is self-evident. Design basis accidents resulting from natural phenomena hazards and operational events do occur and must be addressed. Consequently, emergency preparedness and response is a key component of the safety bases for defense nuclear facilities, as evidenced by its inclusion as a safety management program in the technical safety requirements for these facilities and in specific administrative controls that reference individual elements of emergency response. It is the last line of defense to prevent public and worker exposure to hazardous materials. One of the objectives of DOE's order on emergency preparedness and response (Order 151.1C, *Emergency Management System*) is to ''ensure that the DOE Emergency Management System is ready to respond promptly, efficiently, and effectively to any emergency involving DOE/[National Nuclear Security Administration (NNSA)] facilities, activities, or operations, or requiring DOE/NNSA assistance.'' The Defense Nuclear Facilities Safety Board (Board) believes that the requirements in this order that establish the basis for emergency preparedness and response at DOE sites with defense nuclear facilities, as well as the current implementation of these requirements, must be strengthened to ensure the continued protection of workers and the public.

Problems with emergency preparedness and response have been discussed at Board public hearings and meetings over the past three years, as well as in Board site representative weekly reports and other reviews by members of the Board's technical staff. At its hearings, Board members have stressed the need for DOE to conduct meaningful training and exercises to demonstrate site-wide and regional coordination in response to emergencies. Board members have also encouraged DOE to demonstrate its ability to respond to events that involve multiple facilities at a site and the potential for several ''connected'' events, e.g., an earthquake and a wildland fire at Los Alamos.

On March 21, 2014, and March 28, 2014, the Board communicated to the Secretary of Energy its concerns regarding shortcomings in the responses to a truck fire and radioactive material release event at the Waste Isolation Pilot Plant (WIPP) in Carlsbad, New Mexico. The DOE Accident Investigation Board explored and documented these shortcomings in its reports. Many of the site-specific issues noted at WIPP are prevalent at other sites with defense nuclear facilities, as documented in the attached report.

The Board has observed that these problems can be attributed to the inability of sites with defense nuclear facilities to consistently demonstrate fundamental attributes of a sound emergency preparedness and response program, e.g., adequately resourced emergency preparedness and response programs and proper planning and training for emergencies. DOE has noted these types of problems in reports documenting independent assessments of its sites and in its annual reports on the status of its emergency management system. The annual reports also noted a lack of progress in addressing these problems.

The Board is concerned that these problems stem from DOE's failure to implement existing emergency management requirements and to periodically update these requirements. DOE has not effectively overseen and enforced compliance with these requirements, which establish the baseline for emergency preparedness and response at its sites with defense nuclear facilities. These requirements need to be revised periodically to address lessons learned, needed improvements to site programs, new information from accidents such as those at the Deepwater Horizon drilling rig and the Fukushima Dai-ichi Nuclear Power Plant, and inconsistent

interpretation and implementation of the requirements.

Through its participation in DOE nuclear safety workshops in response to the events at the Fukushima Dai-ichi Nuclear Power Plant and its lines of inquiry regarding emergency preparedness and response at recent public hearings and meetings, Board members have been supportive of DOE's efforts to improve its response to both design basis and beyond design basis events. However, the Board believes DOE's efforts to adequately address emergency preparedness and response at its sites with defense nuclear facilities have fallen short as clearly evidenced by the truck fire and radioactive material release events at WIPP.

Background

Technical planning establishes the basis for emergency preparedness and response at DOE sites with defense nuclear facilities. Technical planning includes the development of emergency preparedness hazards assessments, identification of conditions to recognize and categorize an emergency, and identification of needed protective actions. This basis is used to develop emergency response procedures, training, and drills for emergency response personnel. This basis leads to identification of resource requirements for emergency response, including facilities and equipment. Technical planning is also the basis for determining the scope and scenario of exercises and other assessments used to verify and validate readiness and effectiveness of emergency response capabilities at DOE sites with defense nuclear facilities.

Hazards assessments form the foundation of the technical planning basis for emergency preparedness and response and provide the basis for the preparation of the procedures and resources used as personnel respond to emergencies. As cited in the attached report, the Board has observed that hazards assessments at many DOE sites with defense nuclear facilities do not (1) address all the hazards and potential accident scenarios, (2) contain complete consequence analyses, (3) develop the emergency action levels for recognizing indicators and the severity of an emergency, and (4) contain sufficiently descriptive protective actions. One example of incomplete hazards analysis that is endemic to the complex is the lack of consideration of severe events that could impact multiple facilities, overwhelm emergency response capabilities, and/or have regional impacts.[1] This was a topic of discussion at the Board's public meeting and hearing on the Pantex Plant in Amarillo, Texas, on March 14, 2013, and on the Y–12 National Security Complex in Knoxville, Tennessee, on December 10, 2013.

At many DOE sites with defense nuclear facilities, the Board has observed, as cited in the attached report, that training on the use of emergency response procedures, facilities, and equipment is not adequate to fully prepare facility personnel and members of the emergency response organization. Similarly, drill programs are not adequately developed and implemented to augment this training.

As part of their preparedness for emergencies, DOE sites with defense nuclear facilities have emergency response facilities such as Emergency Operations Centers and firehouses, and associated support equipment. The Board has observed that some emergency response facilities at DOE sites with defense nuclear facilities will not survive all potential accidents and natural phenomena events and, consequently, will be unable to perform their vital function of coordinating emergency response. As discussed in the attached report, many of these facilities will not be habitable during radiological or hazardous material releases. Equipment that is used to support operations of these facilities is frequently poorly maintained and may not be reliable during an emergency.

The Board has also observed problems with DOE efforts to demonstrate the effectiveness of its planning and preparation for emergencies and its response capabilities. Exercises are used to demonstrate a site's capability to respond, and assessments are used to verify adequacy of planning and preparedness. As discussed in the attached report, exercises conducted at many DOE sites with defense nuclear facilities do not adequately encompass the scope of potential scenarios (i.e., various hazards and accidents) that responders may encounter. Some sites do not conduct exercises frequently enough or do not develop challenging scenarios. Many sites are not effective at critiquing their performance, developing corrective actions that address identified problems, and measuring the effectiveness of these corrective actions.

DOE oversight is a mechanism for continuous improvement and is used to verify the adequacy of emergency preparedness and response capabilities at its sites with defense nuclear facilities. As cited in the attached report, the Board has observed that many DOE line oversight assessments are incomplete and ineffective, and do not address the effectiveness of contractor corrective actions. In addition, the Board has noted that the current scope of DOE independent oversight is not adequate to identify needed improvements and to ensure effectiveness of federal and contractor corrective actions.

As observed recently with the emergency responses to the truck fire and radioactive material release events at WIPP, there can be fundamental problems with a site's emergency preparedness and response capability that will only be identified by more comprehensive assessments that address the overall effectiveness of a site's emergency management program. For example, emergencies can occur during off-shift hours, such as the radioactive material release event at WIPP that happened at approximately 11:00 p.m. on Friday, February 14, 2014. Overall effectiveness was the scope of DOE's independent assessments conducted prior to 2010. These assessments consistently identified problems with site emergency preparedness and response, and also sought continuous improvement of these programs. In 2010, DOE independent oversight transitioned to assist visits and did not conduct independent assessments. In 2012, DOE independent oversight returned to conducting independent assessments. However, these assessments are targeted reviews, currently only focused on the ability of the sites to prepare and respond to severe events. As a result, these independent assessments do not encompass all elements of emergency management programs and will not identify many fundamental problems.

Causes of Problems

Based on an evaluation of the problems observed with emergency preparedness and response at DOE sites with defense nuclear facilities, the most important underlying root causes of these problems are ineffective implementation of existing requirements, inadequate revision of requirements to address lessons learned and needed improvements to site programs, and weaknesses in DOE verification and validation of readiness of its sites with defense nuclear facilities.

The Board has observed at various DOE sites with defense nuclear facilities that implementation of DOE's requirements for emergency

[1] Severe events include design basis and beyond design basis events. They also include operational and natural phenomena events.

preparedness and response programs varies widely. Therefore, the Board concluded that some requirements do not have the specificity to ensure effective implementation. For example, existing requirements for hazards assessments lack detail on addressing severe events. Requirements do not address the reliability of emergency response facilities and equipment. Requirements for training and drills do not address expectations for the objectives, scope, frequency, and reviews of effectiveness of these programs. Requirements for exercises do not include expectations for the complexity of scenarios, scope of participation, and corrective actions.

Guidance and direction that address many of the deficiencies in these requirements are included in the Emergency Management Guides that accompany DOE Order 151.1C; however, many sites with defense nuclear facilities do not implement the practices described in these guides. DOE has not updated its directive to address the problem with inconsistent implementation. In addition, DOE has not incorporated the lessons learned from the March 11, 2011, earthquake and tsunami at the Fukushima Dai-ichi Nuclear Power Plant in its directive.[2] These lessons learned need to be more effectively integrated into DOE's directive and guidance on emergency preparedness and response.

The Board also observed that DOE has not effectively conducted oversight and enforcement of its existing requirements. DOE oversight does not consistently identify the needed improvements to site emergency preparedness and response called for in its directive. When problems are identified, their resolution often lacks adequate causal analysis and appropriate corrective actions. When corrective actions are developed and implemented, contractors and federal entities frequently do not measure the effectiveness of these actions.

Conclusions

The Board and DOE oversight entities have identified problems with implementation of emergency preparedness and response requirements at various DOE sites with defense nuclear facilities. The Board has also identified problems with specific emergency preparedness and response requirements. These deficiencies lead to failures to identify and prepare for the suite of plausible emergency scenarios and to demonstrate proficiency in emergency preparedness and response. Such deficiencies can ultimately result in the failure to recognize and respond appropriately to indications of an emergency, as was seen in the recent radioactive material release event at WIPP. Therefore, the Board believes that DOE has not comprehensively and consistently demonstrated its ability to adequately protect workers and the public in the event of an emergency.

Recommendations

To address the deficiencies summarized above, the Board recommends that DOE take the following actions:

1. In its role as a regulator, by the end of 2016, standardize and improve implementation of its criteria and review approach to confirm that all sites with defense nuclear facilities:

a. Have a robust emergency response infrastructure that is survivable, habitable, and maintained to function during emergencies, including severe events that can impact multiple facilities and potentially overwhelm emergency response resources.

b. Have a training and drill program that ensures that emergency response personnel are fully competent in accordance with the expectations delineated in DOE's directive and associated guidance.

c. Are conducting exercises that fully demonstrate their emergency response is capable of responding to scenarios that challenge existing capability, including their response during severe events.

d. Are identifying deficiencies with emergency preparedness and response, conducting causal analysis, developing and implementing effective corrective actions to address these deficiencies, and evaluating the effectiveness of these actions.

e. Have an effective Readiness Assurance Program consistent with DOE Order 151.1C, *Comprehensive Emergency Management System,* Chapter X.

2. Update its emergency management directive to address:

a. Severe events, including requirements that address hazards assessments and exercises, and ''beyond design basis'' operational and natural phenomena events.

b. Reliability and habitability of emergency response facilities and support equipment.

c. Criteria for training and drills, including requirements that address facility conduct of operations drill programs and the interface with emergency response organization team drills.

d. Criteria for exercises to ensure that they are an adequate demonstration of proficiency.

e. Vulnerabilities identified during independent assessments.

Peter S. Winokur, Ph.D.,

Chairman

Recommendation 2014–1 to the Secretary of Energy

Emergency Preparedness and Response

—Findings, supporting data, and analysis—

Introduction. In recent years, multiple high-visibility, high-consequence accidents have occurred. On April 20, 2010, the Deepwater Horizon oil rig exploded and sank, resulting in a sea floor oil gusher flowing for 87 days and releasing about 210 million gallons of oil in the Gulf of Mexico. On March 11, 2011, an earthquake and tsunami struck the Fukushima Dai-ichi Nuclear Power Plant, resulting in equipment failures, and a subsequent loss of coolant accident, nuclear meltdowns, and releases of radioactive materials. Both accidents are examples of an initial event that cascaded into subsequent events. In both cases the facility operators, institutional managers, and emergency responders were not adequately prepared.

The Defense Nuclear Facilities Safety Board (Board) has been concerned about whether (1) the Department of Energy (DOE) has provided adequate direction and guidance for emergency preparedness and response to severe events [1] that could affect multiple facilities, lead to cascading effects, cause loss of necessary utilities and supporting infrastructure, and require coordination for offsite support; (2) DOE sites and facilities have implemented DOE requirements for emergency preparedness and response; (3) DOE, in its role as a regulator, has provided adequate oversight of site and facility emergency preparedness and response; and (4) DOE and its contractors are adequately trained and qualified, and are using drills and exercises effectively and as required. In general, the Board has been concerned about a culture of

[2] Lessons learned from this event that are applicable to DOE sites and facilities were discussed by DOE during its June 2011 Nuclear Safety Workshop and published in its August 16, 2011 report, *A Report to the Secretary of Energy: Review of Requirements and Capabilities for Analyzing and Responding to BDBEs,* and its January 2013 report, *A Report to the Secretary of Energy: Beyond Design Basis Event Pilot Evaluations, Results and Recommendations for Improvements to Enhance Nuclear Safety at DOE Nuclear Facilities.*

[1] Severe events include design basis and beyond design basis events. They also include operational and natural phenomena events.

complacency with respect to emergency preparedness and response.

These concerns about the emergency preparedness and response capabilities of DOE sites have been topics during recent Board public meetings and hearings at the Savannah River Site [1], Los Alamos National Laboratory [2], Pantex Plant [3], and Y–12 National Security Complex (Y–12) [4]. To address these concerns, members of the Board's staff conducted a review (1) to ensure DOE site emergency preparedness and response capabilities provide adequate protection of the public and workers; and (2) to provide feedback to DOE Headquarters and sites about improvements to complex-wide emergency management programs and site emergency preparedness and response. The objectives for the review included:

• Assessing individual DOE site emergency preparedness and response capabilities.

• Assessing DOE Headquarters efforts to provide comprehensive requirements and guidance, and to provide oversight and enforcement for conducting emergency management; specifically, recent efforts to improve site preparedness for severe events.

As part of an effort to assess the overall ''health'' of emergency preparedness and response at DOE defense nuclear facilities, members of the Board's staff conducted programmatic reviews at DOE's National Nuclear Security Administration (NNSA) and Environmental Management sites, representing the various elements of the nuclear weapons complex (i.e., weapons design laboratories, production sites, and cleanup sites). These assessments included reviews of emergency management program documents (including policy documents, plans, hazard assessments, and procedures; findings and opportunities for improvement (OFIs) resulting from federal and contractor assessments; corrective actions to address findings and OFIs; exercise and drill packages, with their associated after-action reports; etc.); onsite programmatic reviews; reviews conducted using video conferencing facilities; reviews to follow up on the results of previous reviews; and observation of drills and exercises. In addition to reviewing emergency preparedness and response in general, the staff reviews also addressed the ability to prepare and respond to severe events (e.g., events that can affect multiple facilities, can cascade into additional events, and can overwhelm site resources).

Historical Background. The Board has had a long-standing interest in the state of emergency preparedness and response at DOE sites that predates Deepwater Horizon and Fukushima. In the late 1990s, the Board issued a Technical Report [5] and a Recommendation [6] that led to improvements in emergency preparedness and response. However, the Board observed in the past several years that the momentum for continuous improvement has faded and that some sites have lost ground, failing to institutionalize improvements they had begun. The following section summarizes the Board's earlier engagement in improving emergency preparedness and response at DOE sites, and the fate of the resulting improvements.

DNFSB Technical Report—In March 1999, the Board published Technical Report-21, *Status of Emergency Management at Defense Nuclear Facilities of the Department of Energy.* The reviews documented in that report were based on objective evaluation guidance promulgated by both DOE [7] and the Federal Emergency Management Agency [8]. Although the evaluations were based on observations at several facilities with widely diverse missions and operating characteristics, and the observations were made over an extended time, there were a number of observations that recurred. The following bulleted list is a direct quote of the Board's general conclusions regarding the status of emergency management in a DOE-wide context:

• Top-level requirements and guidance for DOE and contractor organizations involved in emergency management functions are well founded and clearly set forth in appropriate documents.

• Applicable requirements and guidance are applied selectively. In some cases, noncompliance is condoned on the basis of a faulty conclusion—either that a requirement ''doesn't apply here,'' or that a particular guidance element ''isn't mandatory.''

• A potentially serious problem exists at the DOE level, involving apparent misperceptions and questionable interpretations regarding the division of responsibility for: (1) Development and promulgation of emergency management requirements and guidance; (2) establishment, conduct, and supervision of emergency management programs; and (3) oversight and evaluation of performance. Responsibilities are set forth clearly enough in DOE Order 151.1, *Comprehensive Emergency Management System* (dated September 25, 1995) [9], but implementation could be made more effective with better cooperation among senior and mid-level managers in programmatic and staff offices [at DOE Headquarters] involved with emergency management matters. These conflicts, which also exist between DOE Headquarters and field elements, have been observed in other DOE contexts as well. All the involved organizations bear some degree of responsibility for these problems. This matter merits attention at the highest levels of DOE management.

• Deficiencies exist in emergency hazard analyses in one or more of the following areas:

—Thoroughness of hazard assessments performed as elements of emergency planning at defense nuclear facilities, particularly in addressing all nuclear and nonnuclear hazards with potential impact on ongoing nuclear operations.

—Verification and independent review processes used to ensure the completeness and accuracy of the parameters and analytical tools employed in hazard and consequence analyses, and identification of Emergency Classifications, Emergency Planning Zones, and Protective Action Recommendations.

—Integration of emergency hazard assessments with related authorization basis activities for identification and implementation of the controls necessary for effective accident response.

• In general, consequence assessment is weak all across the DOE complex. Observations have included use of inapplicable computational models and/or software that is limited with regard to the hazards and accident scenarios that can be simulated. There are too few qualified responders assigned to execute sophisticated computer modeling programs for downwind plots of likely radiation levels and/or contamination; at some sites this responsibility is vested in a single individual.

• At some sites and facilities, Emergency Action Levels are insufficiently developed and poorly implemented. Response procedures occasionally fail to address reasonably postulated incidents that could lead to an operational emergency, sometimes because hazard assessments were not sufficiently comprehensive or penetrating. In some cases, initiating conditions have not been recognized in sufficient detail to permit timely initiation of the appropriate emergency action.

• Responders are slow to classify emergencies and to disseminate

appropriate Protective Action Recommendations, both in drills and exercises, and in actual events. In some cases, recommended actions have been inconsistent with the prevailing conditions; in others, communication of the recommendations has been confused and unclear, leading either to failure to implement suitable protective measures or to implementation of unnecessary measures.

• Members of emergency response organizations whose emergency response duties are in addition to their routine day-to-day responsibilities are generally provided only minimal training regarding the infrastructure, equipment, and procedures involved in emergency response. Most of the training they do receive is imparted on the job during periodic drills and exercises; little formal classroom training or one-on-one tutoring is conducted for this group of responders.

• Tracking of the resolution of weaknesses disclosed during drills and exercises, as well as those experienced during actual emergencies, is poor. Closure of these issues is, at best, informal, with almost no attention from senior DOE managers. As a result, many weaknesses do not get satisfactorily resolved, and repetition tends to ingrain them groundlessly as inevitable characteristics of emergency response that cannot be corrected.

DNFSB Recommendation 98–1—On September 28, 1998, the Board issued Recommendation 98–1, *Resolution of Issues Identified by Department of Energy (DOE) Internal Oversight* [6]. Under this recommendation, the Board cited the need to establish a clear, comprehensive, and systematic process to address and effectively resolve the environment, safety, and health issues identified by independent oversight during the conduct of assessment activities. As a result, DOE established a disciplined process, clarifying roles and responsibilities for the identification of, and response to, safety issues; established clearer direction on elevating any disputed issues for resolution to the Office of the Secretary, if necessary; and established a tracking and reporting system to effectively manage completion of corrective actions, known as the ''Corrective Actions Tracking System.''

DOE sent the Implementation Plan [10] for Recommendation 98–1 to the Board, which accepted the Implementation Plan in March 1999. As part of its implementation of this plan, DOE developed corrective actions to address the issues identified in Technical Report-21 and during DOE's assessments of emergency management programs. DOE used these corrective actions as case studies to demonstrate execution of its Implementation Plan. Initially, the Corrective Actions Tracking System addressed only emergency management issues.

Evolution of DOE Oversight—After DOE identified serious problems in its security practices, the Secretary of Energy created the Office of Independent Oversight and Performance Assurance in early 1999 to consolidate security-related Department-wide independent oversight into a single office reporting directly to the Office of the Secretary of Energy. As a result of significant concerns with emergency management programs throughout the DOE complex, DOE created the Office of Emergency Management Oversight within the new organization. DOE incorporated the Office of Independent Oversight (which included the Office of Emergency Management Oversight) into the new Office of Security and Safety Performance Assurance in 2004, and then into the Office of Health, Safety and Security in 2006. The Office of Emergency Management Oversight began conducting oversight inspections in 2000.

The Office of Emergency Management Oversight conducted evaluations of the emergency management programs at DOE's sites about every three years, in accordance with DOE Order 470.2A, *Security and Emergency Management Independent Oversight and Performance Assurance Program* [11], and DOE Order 470.2B, *Independent Oversight and Performance Assurance Program* [12].

Initially, the evaluations focused on critical planning and preparedness of sites to classify the severity of emergency conditions and to initiate appropriate protective actions. The evaluations addressed the identification and analysis of hazards, consequence analysis, emergency action levels used to determine the classification of an emergency, and protective actions for the workers and public. The evaluations included limited scope performance tests to demonstrate effectiveness of the emergency response organization to execute these essential response actions. As the Office of Emergency Management Oversight observed improvement with the ability to determine and implement protective actions, it iteratively expanded the scope of the evaluations to include other elements of emergency preparedness, such as the adequacy of plans, procedures, emergency response organization, training, drill and exercise programs, and readiness assurance.

The Office of Emergency Management Oversight documented the results of the evaluations, reviewed corrective action plans, and then followed up with an evaluation of the effectiveness of the corrective actions in the next year. The oversight resulted in progressive improvement in the emergency management programs at the DOE sites. The Board's staff limited its oversight of DOE's emergency management programs as a result of the rigor and effectiveness of the Office of Emergency Management Oversight.

In 2009, in compliance with the new vision for the Office of Health, Safety and Security (HSS) [13], the Office of Emergency Management Oversight focused on assisting DOE line management with solving problems in the area of emergency management, versus independent oversight.[2] In short, this focus included:

• Providing mission support activities only at the request of DOE line managers.

• Defining activities in a collaborative fashion with cognizant site and Headquarters managers and staff, tailoring the activities to best meet identified needs.

• Developing mission support activity reports and similar products that have been specifically designed to provide the information requested by line management, and that do not include ratings or findings.

In addition to moving from an independent oversight mode to an assist mode, the Office of Emergency Management Oversight no longer tracked corrective actions.

DOE began to consider its preparedness for beyond design basis accidents after the 2011 Fukushima accident. As a result, evaluation of emergency preparedness and response at DOE's sites and facilities received attention again. However, DOE limited its reviews to evaluations of severe events.

DOE Response to Fukushima—In response to the March 11, 2011, earthquake and tsunami at the Fukushima Dai-ichi nuclear power plant, the Secretary of Energy issued a safety bulletin, *Events Beyond Design Safety Basis Analysis,* on March 23, 2011 [14]. This safety bulletin identified actions ''to evaluate facility

[2] HSS was recently reorganized into two new offices, the Office of Independent Enterprise Assessments and the Office of Environment, Health, Safety and Security; however, the rest of this paper will reference HSS since that was its designation when the reviews referenced in this paper were conducted. Also note that the Office of Emergency Management Oversight, which subsequently became part of the Office of Safety and Emergency Evaluations, has become the Office of Emergency Management Assessments and is located in the Office of Independent Enterprise Assessments as part of this reorganization.

vulnerabilities to beyond design basis events at [DOE] nuclear facilities and to ensure appropriate provisions are in place to address them.'' The safety bulletin directed that these actions were to be completed for Hazard Category 1 nuclear facilities by April 14, 2011, and for Hazard Category 2 nuclear facilities by May 13, 2011.

During June 6–7, 2011, DOE held a two-day workshop addressing preliminary lessons learned from Fukushima. This workshop included presentations from representatives of government agencies and private industry, plus breakout sessions to identify vulnerabilities associated with beyond design basis events, natural phenomena hazards, emergency management, and actions to address these vulnerabilities. Results from this workshop and the responses to the Secretary of Energy's safety bulletin were published by DOE in the August 2011 Nuclear Safety Workshop Report, *Review of Requirements and Capabilities for Analyzing and Responding to BDBEs* [15]. This report identified recommendations for near-term and long-term actions to improve DOE's nuclear safety. A September 16, 2011, memorandum [16] from the Deputy Secretary ''directed the Office of Health, Safety and Security (HSS) to work with DOE's Nuclear Safety and Security Coordinating Council, and the Program and Field Offices of both DOE and the National Nuclear Security Administration, to develop a strategy to implement the recommended actions and report back to [the Deputy Secretary] by the end of September 2011.'' The memorandum also stated that the Deputy Secretary ''expect[ed] all short-term actions identified in section 8.1 of the attached report [to] be completed by March 31, 2012, and all recommendations to be completed by December 31, 2012.''

HSS issued an implementation strategy, *Strategy for Implementing Beyond Design Basis Event Report Recommendation,* in February 2012 [17]. The implementation strategy addressed all the recommendations in the August 2011 Workshop Report and proposed that guidance and criteria be piloted at several nuclear facilities prior to revising safety basis and emergency management directives. HSS conducted pilot studies at the High Flux Isotope Reactor at the Oak Ridge National Laboratory, the Waste Encapsulation Storage Facility (WESF) at the Hanford Site, the H-Area Tank Farms at the Savannah River Site, and the Tritium Facility at the Savannah River Site [18, 19].

One of the recommendations in the August 2011 Nuclear Safety Workshop Report was to update the emergency management directives by December 2012 with a focus on incorporating requirements and guidance for addressing severe accidents. The DOE Office of Emergency Operations, which is responsible for the development and maintenance of DOE requirements for emergency preparedness and response at its sites, developed draft guidance for planning and preparing for severe events as part of its response to lessons learned from Fukushima; however, it has not been able to incorporate this guidance in the emergency management directives. To date, none of these directives have been updated to reflect the lessons learned from the earthquake and tsunami at the Fukushima Dai-ichi nuclear power plant. In fact, the Office of Emergency Operations has not been able to update either the emergency management order (last revised in 2005) or the supporting guides (last revised in 2007) as part of its normal update and revision cycle. The Operating Experience Level 1 Document, *Improving Department of Energy Capabilities for Mitigating Beyond Design Basis Events* (OE–1), issued in April 2013 [20] does contain a summary of this guidance, but it does not drive action to implement this guidance.

Review Approach. To address the Board's objectives, members of the Board's staff developed three questions that formed the foundation of its review of the state of emergency preparedness and response at DOE defense nuclear facilities:

1. Does DOE provide facility workers, response personnel, and emergency management decision makers with adequate direction and guidance to make timely, conservative emergency response decisions and take actions that focus on protection of the public and workers?

2. Does DOE provide adequate equipment and hardened facilities that enable emergency response personnel and emergency management decision makers to effectively respond to emergencies and protect the public and workers?

3. Do the contractor assurance systems and DOE oversight provide an effective performance assurance evaluation of emergency preparedness and response?

The staff review was supplemented by reviews of relevant DOE independent oversight assessments. Members of the Board's staff also made observations regarding the ability of various site emergency management programs to address severe events, and included observations of the response to the truck fire and radioactive material release events at the Waste Isolation Pilot Plant (WIPP).

Observations. The following sections discuss observations made by members of the Board's staff as part of their review. Although the staff team made observations in numerous areas of emergency preparedness and response, the following sections address staff team observations that will have the most impact on improvements to emergency preparedness and response at DOE sites. The Technical Planning Documents, Training and Drills, and Exercises sections address the first review question. The Facilities and Equipment section addresses the second question. The Oversight and Assessments section addresses the third question. Some observations reflect problems with emergency management program requirements and guidance, including observations addressing: Problems with specific requirements, problems with implementation of guidance, and problems with oversight and enforcement of compliance with these requirements.

Technical Planning Documents—Planning is a key element in developing and maintaining effective emergency preparedness and response. As required by DOE Order 151.1C [21], ''emergency planning must include identification and analysis of hazards and threats, hazard mitigation, development and preparation of emergency plans and procedures, and identification of personnel and resources needed for an effective response.'' DOE Guide 151.1–2, *Technical Planning Basis* [22], provides further clarification, highlighting in section 2.1 the need to document the technical planning basis used to determine ''the necessary plans/procedures, personnel, resources, equipment, and analyses [e.g., determination of an Emergency Planning Zone] that comprise'' an emergency management program.

Hazard Assessments: Development of planning documents begins with identification and analysis of hazards and threats, which is then followed by the development of actions to mitigate the effects of these hazards and threats during an emergency. The Board's staff team observed that the quality of these documents varied widely among the DOE sites, also varying among contractors at a site. Specifically, the staff team observed that hazards assessments at many DOE sites do not address all the hazards and potential

accident scenarios,[3] contain incomplete consequence analyses, do not develop the emergency actions levels (EALs) for recognizing indications and the severity of an emergency, and contain incorrect emergency planning zones. In addition, a few sites limited their hazards assessments to the bounding analysis in their documented safety analysis; as a result, the hazard assessments do not address less severe events warranting protective actions for the workforce, and do not address beyond design basis accidents.

For example, during its 2013 review of the emergency planning hazard assessments (EPHAs) for facilities at the Sandia National Laboratories (SNL) in New Mexico, the Board's staff team found that the EPHAs were incomplete. The EPHAs for SNL defense nuclear facilities included input parameters for consequence analyses, but did not include documentation of the calculation or the results [23–25]. Further, the SNL EPHAs did not document the derivation of, or basis for, the EALs [23–25]. The EPHA for the Pantex Plant did not address flooding as a potential operational emergency, even though flooding occurred on July 7, 2010 [26–29]. The emergency responders for the radioactive material release at WIPP were unable to classify the event to identify needed protective actions because the hazard assessment did not evaluate a radiological release when the mine was unoccupied or when operations underground were not ongoing [30]. Although some sites have addressed natural phenomena events in their EPHAs, others have not. Overall, the sites do not address ''severe'' events that would affect multiple facilities or regional areas.

Emergency Action Levels: During its review of EALs for various sites, members of the Board's staff found that EALs and protective actions in the EPHAs for defense nuclear facilities were often based only on the worst case design basis accidents and were too generic to be effective. When decision makers know that the release is less severe than the worst case accident, they may be reluctant to implement conservative protective actions, particularly those that involve the public. Therefore, it is important to analyze less severe accidents so that less extreme responses can be developed for use by decision makers. EALs were often event-based rather than condition-based (i.e., based on observable criteria or triggers). As a result, emergency response personnel would not be able to identify emergency conditions of various degrees of severity and, therefore, would not be able to select appropriate protective actions. In addition, many of the EPHAs did not contain specific observable criteria or triggers to determine the severity of a radiological or hazardous material release when a release is occurring.

For example, the EALs for SNL were based on ''worst case events''[4] and were event-based only [23, 24, 25, 30]. As a result, emergency response personnel would be unable to classify emergencies at different degrees of severity (Alert, Site Area Emergency, and General Emergency), determine the required response, and determine the needed protective actions for the workers and public. The EALs lacked observable criteria or triggers such as stack monitor readings, the quantity of material involved, the degree that containment or confinement is compromised, and whether ventilation is operating. This failure to include measurable triggers in EALs was also observed by HSS in oversight reviews at other sites such as the Hanford Site [31].

In contrast, the staff observed that the WIPP EALs reference conditions, but only after observing an event (such as a vehicle accident or a fire on a vehicle). Thus, if a condition occurs that is not associated with an observable event that was analyzed in the EPHA (such as occurred during the February 14, 2014, radioactive material release), emergency response personnel would be unable to categorize and classify the event, and then implement appropriate protective actions [29, 32].

Similarly, members of the Board's staff observed a wide variety of problems with EALs at other DOE sites. For example, at the Pantex Plant, EALs were predominantly event-based [33]. At Los Alamos National Laboratory (LANL), some EALs were based on bounding conditions similar to those in the documented safety analysis, and would not lead to the initiation of protective actions for accidents of a lesser degree [34, 35]; while EALs that were condition-based assume that personnel are at work in the facility to observe the indicators [36].[5] Similarly, at Lawrence Livermore National Laboratory (LLNL), EALs were also event-based [37–39]. Some use indicators that were limited to consideration of the initiating event and did not consider the results of the event or the follow-on indicators (e.g., a confinement barrier is defeated, alarms are activated, and monitors indicate a release).

Protective Actions: Some sites default to a protective action of shelter-in-place no matter what the emergency may be. The Pantex Plant [33] and Savannah River Site [40–45] are two sites that use this default protective action extensively.[6] There are some events in which the potential exposures would require an evacuation; however, some sites are sheltering-in-place initially until they recognize that conditions warrant evacuations. Therefore, a necessary evacuation could be delayed and result in unnecessary exposures. For emergencies with the potential for exposures requiring evacuation, sites may need to consider a more timely conservative protective action rather than wait for additional direction from decision makers.

Other sites do not provide sufficient description in their protective actions. Some sites implement shelter-in-place when the need is to take shelter in a structurally sound facility for a natural phenomenon hazard (such as an earthquake or tornado). Sites should have separate protective actions in response to a radioactive or hazardous material release versus protection from physical harm (e.g., falling debris, collapsing buildings, and missiles). Some sites have identified shelter (or take cover) and shelter-in-place (or remain indoors) to address these two categories of protective needs. This problem has been corrected in protective actions at the Savannah River and Hanford sites [46], but is still evident in protective actions at WIPP [32, 47] and LANL [48].[7]

Severe Events: During Board public hearings and meetings at the Savannah

[3] An EPHA does not have to analyze all the scenarios, but it does have to identify all possible initiating events and their impacts and analyze the results of all potential impacts (such as breaching a confinement barrier or causing an explosion or fire).

[4] Although the SNL EALs do consider different quantities of material at risk for various activities, they represent the maximum quantities that could be used for those activities and thus do not consider the use of lesser quantities.

[5] For example, in the Weapons Engineering Tritium Facility (WETF) and Chemistry & Metallurgy Research Facility EPHAs [34, 35], the material at risk (MAR) for each scenario is the bounding limit in the technical safety requirements. As a result, none of WETF EALs are less than general emergencies when the ventilation is not intact and none of the Chemistry & Metallurgy Research EALs are less than a site area emergency.

[6] If the hazard from an emergency is an internal exposure hazard, then sheltering-in-place would be appropriate; however, if the release leads to an external exposure hazard, then sheltering-in-place may not be acceptable and it may be important to evacuate personnel as soon as possible. Similarly, if the release is of short duration, sheltering-in-place may be appropriate; whereas, a long duration release with significant consequences might require early evacuation.

[7] For example, the LANL protective action guide only addresses sheltering as a ''strategy to reduce exposure to airborne materials.''

River Site [1], LANL [2], Pantex Plant [3], and Y–12 [4], the Board discussed weaknesses in the ability of DOE sites to respond to severe events. In addition, as part of its reviews of the overall state of emergency preparedness and response at DOE sites, members of the Board's staff reviewed the preparedness for, and the ability to respond to, severe events. During these reviews, the staff team identified weaknesses in existing programs, as well as elicited input from the sites on gaps in the existing requirements and guidance. Many sites have not completed a hazard assessment for severe events; particularly events that can affect multiple facilities and events that can affect a regional area [15, 20]. As a result, they have not developed EALs and protective actions commensurate with the unique hazards and complexity of these events. Technical planning requirements are focused on individual facilities without consideration of the impact of collective facilities with additional and varied hazards.

Specific gaps in requirements and guidance that were identified by the sites during the reviews by members of the Board's staff or through the staff's review of their existing programs include:

- The need for clarification of the definition of a severe event, and the actions that sites are expected to take to prepare for such events, particularly addressing the question of ''how much preparation is enough for severe events.''
- The focus of existing requirements on individual facilities with no current direction on evaluating multi-facility events.
- The need to develop a methodology for prioritizing response to multi-facility events, including the development of prioritization strategies for response, mitigation, and reentry.
- The need to incorporate self-help and basic preparedness training into workforce refresher training.
- The need to develop a logistical process for providing food, water, and other essentials to responders if they are required to stay on site for an extended period of time.

Although DOE's OE–1 highlights the need to incorporate some of these considerations in site emergency management programs, it does not provide explicit guidance on how to do so.

Members of the Board's staff also had the opportunity to observe pilot studies at WESF at the Hanford Site, and at the tank farms and Tritium Facility at the Savannah River Site. The studies were conducted by HSS in tandem with the Office of Emergency Operations to develop guidance on how to address beyond design basis events in documented safety analyses and how to address severe events in emergency management programs [18, 19]. One major gap identified by the staff team during its reviews, as well as by the pilot study group at both the Hanford and Savannah River sites, is related to the actions to be taken by facility personnel in the immediate aftermath of a severe event (i.e., actions taken by facility personnel that will put the facility into a safe and stable condition). Although the pilot study report, *BDBE Pilot Evaluations, Results and Recommendations for Improvements to Enhance Nuclear Safety at DOE Nuclear Facilities* [18], highlights this gap, it does not identify who will develop guidance to address the gap. DOE's OE–1 does not mention this issue.

In general, members of the Board's staff observed problems associated with requirements (or lack of requirements) addressing severe events, specifically those addressing the scope of hazards assessments, EALs, and protective actions that address the complexity of events that could cascade or affect multiple facilities. The staff team also observed problems with identification and development of actions to be taken by workers in the immediate aftermath of an event and in situations where outside response is delayed.

Training and Drills—With respect to preparation for emergencies, DOE Order 151.1C, Chapter IV, 4.a requires that:

A coordinated program of training and drills for developing and/or maintaining specific emergency response capabilities must be an integral part of the emergency management program. The program must apply to emergency response personnel and organizations that the site/facility expects to respond to onsite emergencies.

The associated emergency management guide [7] contains detail on meeting this requirement. Members of the Board's staff submitted comments pertaining to training requirements in the order and guides during the last order revision cycle in 2005. At the conclusion of the RevCom process, DOE personnel responded to these comments with a commitment to address them during the next revision cycle [49]. These comments focused on the need to include requirements for the effectiveness of training and drills, and for responsibilities to ensure the adequacy and consistency of training and drills. These comments were based on the staff team's observation that implementation of training and drill programs was inconsistent among the DOE sites, and that more specificity was needed in the requirements.

During its recent reviews, members of the Board's staff continued to observe that the implementation of training and drill programs at DOE sites is variable; these programs were also addressed during Board public meetings and hearings [1, 3]. At some sites such as Y–12, Savannah River Site, and Hanford Site, the training of emergency response personnel is well developed and executed. At some sites, a task analysis of individual positions was completed, and training was developed and executed to address these tasks. Drills were scheduled to practice these tasks, and the basis for qualification was determined and confirmed. As part of the training program, some sites identified continuing training and the need for retraining based on feedback from performance on drills and exercises.

However, at other sites, the quality of training varied significantly, sometimes to the point of being perfunctory and limited to only participation of the emergency response organization. Some sites schedule drills, but rarely perform them, while other sites do not have a drill program that meets the expectations of the guidance. In general, the training and drills conducted at some sites frequently do not reflect lessons learned and feedback from performance of exercises. For example, the Pantex Plant has a drill program, but conducts few of the scheduled drills. SNL conducts drills; however, the drills involving facility personnel are only evacuation drills and are essentially the equivalent of fire drills.

The staff also observed issues with the training and qualification of emergency management program staff at various sites. Some sites, such as the contractors at Y–12, Savannah River Site, and Hanford Site, have established qualification programs for these personnel and hire experienced personnel or train personnel to fill these positions. Other sites, such as the Pantex Plant, have not established training qualification requirements for their emergency management program staff.

Exercises—As part of a site's preparedness for responding to emergencies, DOE Order 151.1C requires that ''[a] formal exercise program must be established to validate all elements of the emergency management program over a five-year period.'' The Order also stipulates that ''[e]ach exercise must have specific objectives and must be fully

documented (e.g., by scenario packages that include objectives, scope, timelines, injects, controller instructions, and evaluation criteria).'' In addition, Chapter 4, 4.b(1) of the Order requires that:

(a) Each DOE/NNSA facility subject to this chapter must exercise its emergency response capability annually and include at least facility-level evaluation and critique.

(b) Site-level emergency response organization elements and resources must participate in a minimum of one exercise annually. This site exercise must be designed to test and demonstrate the site's integrated emergency response capability. For multiple facility sites, the basis for the exercise must be rotated among facilities.

This requirement to conduct exercises is further clarified in section 3.1 of the DOE Emergency Management Guide 151.1–3, *Programmatic Elements,* which provides guidance for DOE sites to:

> * * * establish a formal exercise program that validates all elements of a facility/site or activity emergency management program over a 5-year period. The exercise program should validate both facility- and site-level emergency management program elements by initiating a response to simulated, realistic emergency events or conditions in a manner that, as nearly as possible, replicates an integrated emergency response to an actual event.

Members of the Board's staff reviewed exercise programs at various DOE sites as part of its programmatic reviews of emergency management programs, as well as through observations of exercises conducted at DOE sites. The staff team observed a wide variability in the quality of the scenarios. Some sites had challenging scenarios and a few recent site exercises involved severe events, including multiple facilities and cascading events. However, other sites had scenarios that were not challenging and did not fully test the capabilities of the site. Some sites do not have a 5-year plan for exercises that involves all of the hazards and accidents at their facilities with EPHAs. In addition, some sites do not exercise all of their facilities with EPHAs and all of their response elements on an annual basis.

Exercises are intended to be a demonstration of performance and, therefore, addressing all the elements of emergency response on an annual basis is important. The staff team observed specific problems with planning and scheduling of exercises at various sites. Some sites, such as the Pantex Plant, did not conduct an annual site-wide exercise in 2013 [50]; while other sites, such as SNL, are not conducting annual exercises (or appropriately tailored drills to test emergency preparedness and response) for each facility that has an EPHA [51–53]. In addition, some of these sites, such as the Pantex Plant [23, 54, 55], do not conduct exercises to ''validate all elements of an emergency management program over a 5-year period.'' At SNL, the staff team was particularly concerned that emergency management personnel are not scheduling drills and exercises that address the different types of hazards and accident scenarios possible at its nuclear facilities. The drills and exercises should train and test the various elements of their capability for responding to radiological hazards and scenarios. In addition, the staff team observed that few if any of the sites have scheduled exercises to be conducted during swing and night shifts.

As part of its observations of exercises and review of exercise packages, members of the Board's staff observed several examples of exercise scenarios that were not challenging enough to demonstrate proficiency. For example, the 2013 annual exercise at the Savannah River Site [56] involved the drop of a 55-gallon drum of radioactive waste during a repackaging operation at the Solid Waste Management Facility. The exercise assumed that the dropped drum injured an employee and resulted in contamination in the immediate area of the drum. Similarly, the 2013 exercise at the Pantex Plant [50], which was conducted in January 2014, also involved a simplistic scenario involving a liquid nitrogen truck in a vehicular accident. The hazardous release was limited and required little protective action to be taken by the plant population. In contrast to these simplistic scenarios, the 2013 site-wide exercise at the Hanford Site [57] involved an earthquake that led to problems at multiple facilities, including a tunnel collapse at PUREX and a release of contamination and a fire at WESF, that were compounded initially by problems with communications.

In addition to the use of simplistic scenarios, another problem observed by the staff team was the failure of most sites to adequately incorporate recovery actions into the exercise. Due to the hazardous nature of operations at DOE sites, planning and implementing recovery and reentry actions will be extremely complex, as evidenced by the current recovery activities at WIPP. Recovery at other DOE sites could be more difficult due to the more hazardous and complex nature of operations at those sites. Planning and implementing recovery actions are typically not demonstrated in detail during the normal scope of annual emergency exercises at DOE sites, or in follow-on exercises [3, 4, 58]. For example, the 2013 Savannah River Site annual site-wide exercise demonstrated the importance of more fully exercising recovery planning. The exercise team did not appear to understand the level of detail required for developing a recovery plan outline and had a difficult time completing the outline for recovery planning that is included in the Savannah River Site emergency procedures [59].

Members of the Board's staff also observed problems with the preparation and conduct of exercises. Problems associated with preparation for exercises have involved both the content and timing. Specifically, the staff team observed that some sites use identical scenarios in the drills preparing for exercises, and some sites often schedule the majority of their drills immediately prior (i.e., within days) to the exercise [60, 61]. Although it is appropriate to use drills to train and practice, these strategies can lead to a false impression of a site's preparedness and response capability (i.e., ''cramming for the exam''). The graded exercise becomes a snapshot of proficiency rather than being a true representation of long-term proficiency. For example, at the Savannah River Site, the staff team observed that the scenarios used in preparation for the 2013 evaluated exercise for Building 235–F addressing concerns raised in Board Recommendation 2012–1 were identical to the scenario planned for the actual exercise. Based on feedback from the Board's Savannah River site representatives, the scenario was changed [61]. The Board's site representatives raised similar concerns with scenarios used to prepare for other exercises at the Savannah River Site, and this practice appears to have been changed. The staff team observed that at some sites, such as the Hanford Site, these preparatory drills are conducted immediately prior to the actual performance of the exercise, ensuring that the participants can perform adequately during the actual exercise, but not addressing the need for making sustained improvements in emergency preparedness and response capabilities by conducting preparation activities throughout the course of the year.

As part of its observation of exercises at various sites, members of the Board's staff had the opportunity to observe after-exercise critiques, as well as to review the after action reports for the exercises. During many exercises, the staff team observed that evaluators

failed to document needed improvements identified during the course of the exercise. The staff team also observed that the critiques were often not adequate to identify the underlying causes of problems during the exercise and that subsequent assessments and evaluations did not ensure the effectiveness of corrective actions to address these problems. One example of a flawed critique system was observed at the Pantex Plant, where the 2011 exercise was originally graded as ''satisfactory'' and the 2012 exercise was originally graded as ''successful.'' After Board Member questions during the public meeting and hearing on the Pantex Plant and subsequent staff questions, Babcock & Wilcox Technical Services Pantex, LLC (B&W Pantex) regraded the 2011 exercise as ''unsatisfactory'' and the 2012 exercise as ''marginal'' [3, 62].

Members of the Board's staff also observed that some sites incorporated severe event scenarios into their drill and exercise programs. Some sites have conducted exercises that include severe event scenarios that encompass multiple facilities; however, some sites such as the Pantex Plant and Y–12 have yet to do so [3, 4]. It is important to practice and demonstrate proficiency in responding to severe event scenarios due to the complexity of response, the need to prioritize limited resources, the need to make decisions about protective actions when multiple facilities are involved, the potential need to respond without the assistance of mutual aid, and the potential loss of infrastructure (e.g., power, communications, mobility). The current DOE directives do not contain requirements or expectations to conduct these types of challenging exercises. While DOE's OE–1 contains guidance on the scope of severe event scenarios that should be conducted by the sites, it does not explicitly require that the sites conduct these types of exercises.

Facilities and Equipment—DOE Order 151.1C requires a site's emergency program to address the ''provision of facilities and equipment adequate to support emergency response, including the capability to notify employees of an emergency to facilitate the safe evacuation of employees from the work place, immediate work area, or both.'' Facilities include an emergency operations center (EOC) and an alternate, and the Order stipulates that these facilities must be ''available, operable, and maintained.'' Maintenance and appropriate upgrading of emergency response facilities and equipment are an important part of ensuring that the emergency preparedness and response capabilities of a site are sustainable. Communications and notification systems are necessary to initiate protective actions and enable safe evacuation of employees. Chapter 4 of the Order requires ''[p]rompt initial notification of workers, emergency response personnel, and response organizations, including DOE/NNSA elements and State, Tribal, and local organizations, and continuing effective communication among response organizations throughout an emergency.''

The staff team observed some problems with the survivability, habitability, and maintenance of emergency response facilities and equipment, as well as communications and notification systems [63, 64] that the staff believes are due to the lack of explicit requirements or expectations in the DOE Order and Guides. Specifically, members of the Board's staff observed that many of the emergency response facilities may not be habitable in the aftermath of a hazardous or radiological material release event, or survivable in the aftermath of a severe natural phenomena event. These facilities were not designed to survive an earthquake, and many do not have ventilation systems that will filter radiological and toxicological materials. Examples of such facilities include the Emergency Control Center (ECC), the Technical Support Center (TSC), and the fire house at Y–12 [4, 66]; the EOC at the Hanford Site [67]; the EOC and alternate EOC, the Department Operations Centers, and the Emergency Communications Center at LLNL [68]; and the EOC and Central Monitoring Room at WIPP [69].

Some facilities were designed with filtered air systems that would enable them to remain habitable in the event of a hazardous release in proximity to the facility. However, members of the Board's staff observed that some of these systems were not being properly maintained [63, 64, 68–71]. Habitability of these facilities could also be compromised by failures of their emergency backup systems. Many of the facilities have backup systems that are general service and do not have a pedigree for an expectation of reliability. In general, the staff team observed problems with the lack of established maintenance programs for these facilities and support equipment, such as backup generators and fuel tanks [63, 64, 67–69, 71]. It should be noted that some of these facilities are scheduled to be replaced. For example, Babcock and Wilcox Technical Services Y–12, LLC (B&W Y–12) has a new project planned to replace the ECC and the TSC, with funding beginning in fiscal year 2015 and project completion scheduled in fiscal year 2017, and B&W Y–12 is preparing for Critical Decision–0 for a new fire house [4]. Similarly, there are plans to replace the LLNL EOC.

Members of the Board's staff also observed problems with systems used to support emergency communications and notifications. For example, the staff observed problems with the systems used to notify workers and visitors about an emergency and protective actions that are to be taken, such as was observed recently at WIPP during the underground truck fire [72]. Some systems have experienced failures to broadcast due to failures of sirens, overriding signals, and incomplete coverage, or have provided workers with garbled messages [73–78]. The staff team also observed potential problems with the method by which remote workers, such as those at the Hanford Site, are notified of emergencies via portable alerting systems, and the process by which they are refreshed on hazards and responses (e.g., pre-job briefings).

In addition to the vulnerabilities of some of these facilities during an emergency, the Board's staff team also observed, based on its review of site exercise schedules across DOE sites, that alternate emergency response facilities were not being exercised on a periodic basis. In general, many of the alternate response facilities have limited, older, less-effective communications systems and support equipment, which could dramatically hamper on-site emergency response. Their locations are sometimes so close to the primary facilities that they will suffer the same habitability problems. Conversely, sometimes they are so distant that it will be difficult for personnel to travel to the alternate facilities. Therefore, it is important for emergency response personnel to practice using the less-effective equipment and understand the challenges of using alternate facilities.

Oversight and Assessment—As part of its readiness assurance requirements, DOE Order 151.1C stipulates the need for assessments of emergency management programs and capabilities by the contractor and oversight of these programs and capabilities by DOE program and field (site) offices. Additionally, in the general requirements sections of the Order, the HSS Office of Security and Safety Performance is tasked with responsibility for independent oversight of emergency management programs at

DOE sites.[8] Members of the Board's staff have observed problems with oversight of emergency management programs overseen by DOE Headquarters and site office personnel, and with assessments and self-assessments conducted by the contractors. These failures are contributing to the problems with the emergency management programs at the various sites that have been observed by the staff team, particularly problems that are long-standing or recurrent.

Federal Independent Oversight: The Office of Safety and Emergency Management Evaluations in HSS was responsible for oversight of emergency management programs at DOE sites.[9] The Office of Emergency Operations is responsible for the development and maintenance of emergency management requirements for programs at all DOE sites, and is also responsible for providing interpretations of these requirements. The Office of Emergency Operations also has responsibility for NNSA emergency management programmatic support to NNSA sites. The Office of Emergency Operations does not conduct assessments of emergency management programs at DOE (or NNSA) sites. However, when requested, it provides assistance to sites and subject matter experts to support reviews, such as readiness reviews and biennial reviews by the NNSA Chief of Defense Nuclear Safety (CDNS).

After operating in an assistance mode since 2010, HSS returned in 2012 to conducting independent assessments. These assessments are targeted reviews, currently focused on the ability of the sites to prepare and respond to severe events, and do not encompass all elements of emergency management programs. In 2012, HSS focused on five elements (Emergency Response Organization, Equipment and Facilities, Technical Planning Basis, EPHAs, and Off-site Interfaces) for severe event preparedness in its reviews at five sites and one facility (Y–12 [70], LANL [71], Idaho National Laboratory [79], WIPP [69], Paducah Gaseous Diffusion Plant [80], and the Tritium Facilities at the Savannah River Site [81]). In 2013, HSS focused on three new elements, while retaining three elements from its 2012 reviews (Off-site Interfaces, Equipment and Facilities, EPHAs, Medical Response, Training and Drills, and Termination and Recovery) at four sites (LLNL [68], Portsmouth Gaseous Diffusion Plant [82], Hanford Site [67], and the Nevada National Security Site (NNSS) [83]). After each of its reviews, HSS produced a document summarizing the results of the review and identifying findings and OFIs. HSS also issues a year-end report that highlights common issues, lessons learned, and recommended actions [63, 64]. Unlike the independent assessments conducted previously in the 2000–2009 timeframe, adjudication of findings is left to site offices. HSS does not review corrective actions or their effectiveness, although it may review the resolution of findings from previous assessments as part of its follow-up review.

As part of its review of the efficacy of federal oversight, members of the Board's staff reviewed the reports issued by HSS in 2012 and 2013, and observed its targeted assessments at LLNL, Hanford Site, and NNSS conducted in 2013. The staff team observed that these assessments were effective in identifying issues associated with a site's preparedness to respond to severe events. The HSS assessment team does not assess the site's capability to respond to less severe events that are more likely to occur. Although the assessment team does identify fundamental program weaknesses as part of its assessment, it does not document these weaknesses. As a result, the assessments do not evaluate the overall effectiveness of a site's emergency preparedness and response capability. As observed recently with the emergency responses to the truck fire and radioactive release events at WIPP, there can be fundamental problems with a site's emergency preparedness and response capability that will only be identified by more comprehensive assessments designed to evaluate the overall effectiveness of a site's emergency management program. Independent assessments conducted prior to 2010 focused on overall effectiveness. These assessments consistently identified problems with site emergency preparedness and response, and HSS sought to ensure continuous improvement of these programs by conducting follow up assessments.

The HSS targeted assessments did not include an observation of drills or exercises. Drills and exercises are representative of a site's broader response capability. While the HSS team observed a drill during its assessment at LLNL, this exercise was outside the scope of the assessment and was not incorporated into the potential findings and OFIs of their report. During 2014, HSS is observing severe event exercises as part of its assessments.

Members of the Board's staff found that many of the HSS findings from its independent assessments conducted prior to 2010, as well as findings from the HSS targeted assessments, were not effectively addressed. Specifically, based on its review of numerous federal and contractor assessments and associated corrective action plans, the staff team found that many of the corrective actions did not adequately address the specifics of the findings or did not result in long-term resolution of the issue. In many cases, there was not adequate causal analysis and there was no review of the effectiveness of the corrective actions. As a result, findings have gone uncorrected, sometimes for many years, and are found again in subsequent assessments.

For example, members of the Board's staff reviewed the 2009 HSS report [30] as part of the staff's 2013 assessment at SNL. Several of the findings in the report addressed the inability of emergency response personnel to effectively use emergency plans and procedures to implement protective actions. In addition, as part of their discussions of program weaknesses and items requiring attention, the HSS assessors identified problems with using EALs due to their complexity and the overly conservative nature of the protective actions. The staff team reviewed the EALs [23–25] and protective actions [84–97], as well as other technical planning documents such as EPHAs [23–25]. The staff team found them to be of poor quality and difficult to implement. When the staff team discussed the HSS findings with Sandia Field Office and SNL emergency management personnel, the SNL personnel indicated that they developed corrective actions to address the findings in the HSS report and all corrective actions had been completed. However, based on its 2013 assessment, the staff team found that the original problems identified by HSS still existed. SNL did not address the implications of the systemic program weaknesses identified by HSS regarding the entire suite of SNL technical planning documents, not just EALs. Thus, the original findings identified by HSS were not effectively addressed by SNL.

Similarly, during the HSS targeted assessment conducted at the Hanford Site in 2013 that was observed by members of the Board's staff, HSS team members noted that the same issues had been identified during the team's assist visit to the Hanford Site in 2010 [67]. HSS team members also noted that recommendations from the 2010 visit had been entered and closed in the site's corrective active tracking system but

[8] The Office of Independent Enterprise Assessments now has this responsibility. See Footnote 2.

[9] The Office of Emergency Management Assessments now has this responsibility. See Footnote 2.

were observed again during the 2013 assessment.

Federal Line Oversight: In addition to oversight conducted by DOE Headquarters personnel, members of the Board's staff also reviewed oversight by site office personnel of contractor emergency management programs. The scope of this review included numerous federal assessment reports and associated contractor corrective action plans. The level and type of oversight conducted by site office personnel varied widely across DOE sites. At some sites, the federal employee responsible for emergency management did not have any other responsibilities; at other sites, such as Y–12, emergency management was a collateral duty. At some sites, this position rotated frequently and there was a long period of time before the individual responsible for oversight of the contractor's emergency management program was qualified as an emergency management specialist per the DOE qualification standard [98, 99].

The type of oversight conducted by site office personnel varied widely, ranging from independent assessments to shadow assessments of contractor reviews to reviews of data provided by contractor assurance systems. Sole reliance on data provided by the contractor assurance system without confirmatory independent reviews can be problematic. For example, the Y–12 emergency management program manager relied heavily on the results of B&W Y–12 management self-assessments of its emergency management program against the 15 assessment criteria suggested by the DOE Emergency Management guides, with the exception of direct observation of Y–12 exercises by the program manager, assisted by other personnel. Although the general health of the Y–12 emergency management program appeared to be consistent with DOE requirements and guidance, the oversight strategy employed by the NNSA Production Office may not be able to identify a reduction in effectiveness of the program. While this has not been a problem at Y–12, the programs at SNL and WIPP demonstrate that this is a problem at sites that do not have a strong contractor emergency management program.

Contractor Assessments: Most of the sites reviewed by members of the Board's staff were conducting annual assessments of their emergency management programs using the 15 criteria suggested by the DOE Emergency Management Guides. However, based on its review of numerous contractor assessment reports, the staff team observed that many of the assessments were not effective at identifying problems and weaknesses with their programs. For example, many of the observations identified by HSS were not identified by the contractor assessments. As already discussed, SNL did not identify problems with its technical planning documents or its failure to conduct required exercises, and B&W Pantex did not identify problems with its training and drill and exercise programs. Similarly, LANL did not identify problems with the membership of its emergency response organization [100].

Members of the Board's staff also observed that while most sites developed corrective actions to address issues identified in their assessments, as well as independent assessments, and tracked actions to closure, few sites were evaluating the effectiveness of these corrective actions. As already discussed, many of the sites, such as the Hanford Site and SNL, were not effectively addressing the findings and OFIs identified by external reviewers such as HSS and CDNS. Specifically, they were performing poor root cause analyses and were not performing reviews of the effectiveness of these corrective actions to address the issues and prevent their recurrence.

Another area of weakness noted by members of the Board's staff during its review of assessments and corrective actions, and observation of exercises was exercise assessment and critique. The staff team reviewed numerous exercise packages, after action reports, and corrective action plans, and observed many annual site exercises. The staff team observed that the critiques were often superficial, were not self-critical, and downplayed the significance of findings while conveying an aura of success. Most critiques failed to identify the root causes of problems, thus these problems recurred. For example, several significant findings of critical response capabilities, such as delayed notifications and lack of communication within the response organization, were identified during exercises at the Pantex Plant, yet the results of the exercises were graded as satisfactory [3]. The need for critical review of exercises has now been recognized by the NNSA Production Office and B&W Pantex, and corrective actions are now being implemented.

Summary of Observations. The following table summarizes the Board's staff team's observations of the three questions that formed the foundation of its review of the state of emergency preparedness and response at DOE sites with defense nuclear facilities:

Review Question 1:	Review Question 2:	Review Question 3:
Does DOE provide facility workers, response personnel, and emergency management decision makers with adequate direction and guidance to make timely, conservative emergency response decisions and take actions that focus on protection of the public and workers?	Does DOE provide adequate equipment and hardened facilities that enable emergency response personnel and emergency management decision makers to effectively respond to emergencies and protect the public and workers?	Do the contractor assurance systems and DOE oversight provide an effective performance assurance evaluation of emergency preparedness and response?
Many EPHAs did not adequately cover plausible emergency scenarios, including severe events.	Many emergency facilities will not be survivable or habitable during an emergency.	Many contractor assurance systems were not effective at sustainably correcting identified emergency preparedness and response issues.
Many EALs did not provide a clear method to identify the severity of events in order to categorize and classify an emergency and select protective actions.	Many emergency facilities and their alternates did not have reliable support systems, including an adequate maintenance program.	DOE Headquarters and local site personnel were not providing effective oversight to ensure emergency preparedness and response issues are identified and corrected.
Many emergency protective actions did not have the clarity to ensure the protection of workers and the public during an emergency.	Many communications and notification systems were not adequate to ensure notification of workers and the public.	

Review Question 1:	Review Question 2:	Review Question 3:
Many facility worker, initial responder, and EOC personnel training and drills were not adequate to prepare and qualify personnel to ensure timely, effective response during an emergency.		
Many site emergency exercise programs did not demonstrate proficiency and did not identify weaknesses that will allow management to effectively drive improvements in emergency preparedness and response.		

In general, the staff team observed that implementation of DOE's requirements for emergency preparedness and response programs varies widely at various DOE sites with defense nuclear facilities. DOE has noted these types of problems in the HSS reports documenting independent assessments of its sites and in its annual reports on the status of its emergency management system. The annual reports also noted a lack of progress in addressing these problems [101–103].

Based on an evaluation of these observations, the staff team determined that the most important underlying root causes of these problems were inadequate implementation and revision of requirements, and ineffective contractor and federal verification and validation of readiness for responding to emergencies.

Conclusions. In the aftermath of DOE's implementation of corrective actions addressing Board Recommendation 98–1, members of the Board's staff observed considerable improvement in emergency preparedness and response at many DOE sites across the complex. However, during this review of emergency preparedness and response, the staff team found that many sites had not continued to improve their programs, and in some cases, there had been degradation in these programs. One of the contributing factors in this lack of sustained continuous improvement was the failure of DOE as a regulator of emergency management programs at its sites. Although the problems observed by the Board's staff team were largely associated with a failure to implement existing requirements and guidance, the Office of Emergency Operations has failed to maintain and improve the requirements and guidance in its directives, particularly in response to addressing lessons learned, needed improvements to site programs, and inconsistent interpretation and implementation of the requirements. The Office of Emergency Operations has also failed to revise its requirements to address lessons learned from Fukushima and use feedback from its sites on the type of guidance needed to effectively prepare and respond to severe events.

Many problems result from inconsistent implementation of existing requirements by the various DOE sites; therefore, the staff team concluded that some requirements do not have the level of specificity to ensure effective implementation. Requirements for hazards assessments lack detail on addressing severe events. Requirements do not address reliability of emergency response facilities and equipment. Requirements for training and drills do not address expectations for the objectives, scope, frequency, and reviews of effectiveness. Requirements for exercises do not include expectations for the complexity of scenarios, scope of participation, grading of proficiency, and corrective actions. Some of the additional detail that addresses the deficiencies in these requirements is already included in the Emergency Guides that accompany DOE Order 151.1C. However, many sites have not implemented the practices described in the guides.

Contractor assessment and federal oversight often did not identify needed improvements to site emergency preparedness and response, which compounded the observed problems with the implementation of requirements. When problems were identified, they often lacked adequate causal analysis and appropriate corrective actions. When corrective actions were developed and implemented, sites (contractors and federal entities) frequently did not measure the effectiveness of these actions.

During its period of focus on conducting assist visits rather than independent assessments, HSS failed to conduct effective oversight of emergency management programs and enforcement of existing requirements at DOE sites, and did not ensure that the sites adequately responded to its findings and OFIs. HSS has made progress on reengaging in its role of independent oversight of emergency management programs at DOE sites with its recent transition back to independent oversight. The effectiveness of this oversight has been constrained by both the limited scope of the assessments currently being conducted by HSS and by the lack enforcement to ensure that its findings and OFIs are effectively addressed by the sites. The HSS focus on targeted assessments of a site's ability to respond to severe events can lead to a failure to identify fundamental weaknesses in a site's emergency management program. The HSS failure to engage in the resolution of its findings and OFIs is similar to the problem that was the genesis of Board Recommendation 98–1.

These deficiencies in implementation and oversight have led to failures to identify and prepare for the suite of potential emergency scenarios and to demonstrate proficiency, and ultimately to the failure to recognize and respond appropriately to indications of an emergency, as was seen in the recent radioactive material release event at WIPP. Therefore, the Board's staff review team believes that DOE has not comprehensively and consistently demonstrated its ability to protect the worker and the public in the event of an emergency.

DOE Headquarters can address many of these problems by conducting more rigorous and comprehensive independent oversight and by revising its directives to address lessons learned, needed improvements to site programs, and inconsistent interpretation and implementation of the requirements.

Technical and Economic Feasibility of Recommendation. The results of this review by members of the Board's staff were used to support the development of Recommendation 2014–1, *Emergency Preparedness and Response.* The deficiencies identified in this review relate to problems with DOE's safety management framework. The recommendation is technically feasible because it can be addressed using known scientific and engineering principles. The recommendation is

economically feasible because it has been structured to allow DOE to identify short-term and long-term enhancements to its emergency management programs.

Several of these enhancements may involve improvements in infrastructure, while other improvements require the revision and strengthening of directives and guidance, as well as strengthening DOE oversight. Revising its directives is part of its normal process for maintaining the currency of its directives as codified in DOE Order 251.1C, *Departmental Directives Program* [104]. Much of the detail needed to resolve problems of variability of implementation of requirements is already addressed in existing Emergency Management Guides. In addition, improvements to oversight would simply return the type of Headquarters oversight to the levels in which it was previously engaged and is an expectation in its directives on oversight (DOE Order 226.1B, *Implementation of Department of Energy Policy* [105] and DOE Order 227.1, *Independent Oversight Program* [106]). Members of the Board's staff are confident that DOE can identify solutions to address these deficiencies that are technically and economically feasible.

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Risk Assessment for Recommendation 2014–01

Emergency Preparedness & Response

The recommendation addresses vulnerabilities in the Department of Energy's (DOE) safety framework for defense nuclear facilities resulting from deficiencies in the content and implementation of DOE's requirements for emergency preparedness and response. In accordance with the Defense Nuclear Facilities Safety Board's (Board) Policy Statement 5 (PS–5), *Policy Statement on Assessing Risk,* this risk assessment was conducted to support the Board's recommendation on *Emergency Preparedness and Response.* As stated in PS–5,

The Board's assessment of risk may involve quantitative information showing that the order of magnitude of the risk is inconsistent with adequate protection of the health and safety of the workers and the public . . . the Board will explicitly document its assessment of risk when drafting recommendations to the Secretary of Energy in those cases where sufficient data exists to perform a quantitative risk assessment.

DOE's hazards assessments address initiating events, preventive and mitigative controls, and consequences. Initiating events in these assessments include operational and natural phenomena events. Preventive and mitigative controls are design basis controls identified in safety analysis documents. Consequences cover a wide spectrum, ranging from insignificant to catastrophic effects.

Emergency preparedness and response programs exist at DOE sites with defense nuclear facilities because the risk associated with those facilities is acknowledged by DOE and is required by law. Therefore, emergency preparedness and response programs need to function effectively to protect the workers and the public.

This recommendation is focused on improving the effectiveness of DOE's emergency preparedness and response programs. A quantitative risk assessment on the effectiveness of these programs requires data on probability and consequences. However, data do not exist on the probability of failure of elements of the emergency preparedness and response programs. Therefore, it is not possible to do a quantitative assessment of the risk of these elements to provide adequate protection of the workers and the public.

CORRESPONDENCE FROM THE SECRETARY

August 5, 2014.

The Honorable Peter S. Winokur, Chairman
Defense Nuclear Facilities Safety Board
625 Indiana Avenue NW., Suite 700
Washington, DC 20004

Dear Mr. Chairman: Thank you for the opportunity to review the Defense Nuclear Facilities Safety Board (DNFSB) Draft Recommendation 2014–01, *Emergency Preparedness and Response.* DOE agrees that actions are needed to improve emergency preparedness and response capabilities at its defense nuclear facilities. The Department's emergency preparedness and response infrastructure, capabilities, and resources are of great importance to me and DOE's senior leadership. Recommendation 2014–01 will complement actions that the Department has already initiated to improve emergency management.

Following my review of the Draft Recommendation with my leadership team, it appears the document establishes a timeline for accomplishing the recommended actions. I recommend the DNFSB remove the specific time for completing responsive actions. It is the Department's responsibility to determine the necessary resources, including the requisite timeline to accomplish the actions in our implementation plan to address DNSFB recommendations. I share your intent to improve emergency management in the Department and I assure you that the Department takes this situation seriously. We will prioritize efforts and plan to consult with you. I have already directed my staff to expeditiously proceed with improvements which we identified separately, accomplishing the highest priorities within a one year period.

In addition to the wording change identified above, I offer suggested language that may help clarify the DNFSB's intent in the Draft Recommendation. These changes are included as an enclosure for your consideration.

We appreciate the DNFSB's perspective and look forward to continued positive interactions. If you have any questions, please contact me or Mr. Joseph J. Krol, Associate Administrator for Emergency Operations, at 202–586–9892.

Sincerely,

Ernest J. Moniz

Enclosure

Specific DOE Comments on Draft DNFSB Recommendation 2014–01,

Emergency Preparedness and Response

1. The formal process for developing an implementation plan for an accepted recommendation will establish a schedule commensurate with careful consideration of scope, capabilities, and resources, subject to the expectations for timeliness found in the DNFSB enabling legislation. The Department recommends changing the phrase at the beginning of the Draft Recommendation, striking the words, ''. . . during each site's 2015 annual emergency response exercise'', which would change the statement to read, ''To address the deficiencies summarized above, the Board recommends that DOE take the following actions:''

2. Regarding Action 1, the Departmental management model currently uses criteria and review approaches. The current wording, ''develop and initiate'', could lead the public to believe that the Department does not have a criteria and review approach, whereas your staff recognizes that such approaches exist and are in use. The use of this terminology ''criteria and review approach'' also seems to focus narrowly on a particular solution when other parts of the

DNFSB's Draft Recommendation appear to imply that systemic changes are needed in the overall DOE oversight and continuous improvement processes. DOE recommends changing Action 1 to read, ''In its role as a regulator, standardize and improve implementation of its criteria and review approach to confirm . . . .''

3. Regarding Action 2c, as written, it is not clear that you may have intended for ''facility specific drill programs'' to mean drill programs for facility operators, who, as part of conduct of operations, take actions under abnormal and emergency operating procedures to mitigate conditions or that bring facilities into safe shut-down, separate from actions taken by the emergency response organization. DOE recommends changing this action to read, ''. . . including requirements that address facility conduct of operations drill programs and the interface with emergency response organization team drills.''

4. Regarding Action 2e, the intent of this element is unclear since the Department already has continuous improvement processes in place and processes for including lessons learned during implementation of DOE directives into future directive revisions. In addition, Action 2e appears to imply that improvements should be made to the emergency management directive on a one-time basis and that the directive should not be changed until after program reviews called for in Action 1 are completed. The Department recommends a clarification of the intent of this action.

DISPOSITION OF DOE COMMENTS ON DRAFT RECOMMENDATION 2014–1

DOE comment	Board response	Revised wording
The formal process for developing an implementation plan for an accepted recommendation will establish a schedule commensurate with careful consideration of scope, capabilities, and resources, subject to the expectations for timeliness found in the DNFSB enabling legislation. The Department recommends changing the phrase at the beginning of the Draft Recommendation, striking the words, ''during each site's 2015 annual emergency response exercise'', which would change the statement to read, ''To address the deficiencies summarized above, the Board recommends that DOE take the following actions:''	The Board understands the DOE rationale for removing the time constraint from the Recommendation. However, the Board's enabling legislation states that ''not later than one year after the date on which the Secretary of Energy transmits an implementation plan with respect to a Recommendation (or part thereof) under subsection (f), the Secretary shall carry out and complete the implementation plan.'' The Board believes that the actions in the first sub- Recommendation can be accomplished by the end of 2016 and has revised the wording of the Recommendation accordingly.	To address the deficiencies summarized above, the Board recommends that DOE take the following actions: 1. In its role as a regulator, by the end of 2016, standardize and improve implementation of its criteria and review approach to confirm that all sites with defense nuclear facilities:
Regarding Action 1, the Departmental management model currently uses criteria and review approaches. The current wording, ''develop and initiate'', could lead the public to believe that the Department does not have a criteria and review approach, whereas your staff recognizes that such approaches exist and are in use. The use of this terminology ''criteria and review approach'' also seems to focus narrowly on a particular solution when other parts of the DNFSB's Draft Recommendation appear to imply that systemic changes are needed in the overall DOE oversight and continuous improvement processes. DOE recommends changing Action 1 to read, ''In its role as a regulator, standardize and improve implementation of its criteria and review approach to confirm ''	The Board acknowledges that DOE uses criteria and review approaches in its current oversight of the emergency preparedness and response capabilities of its sites. However, as discussed in the Recommendation, '' the current scope of DOE independent oversight is not adequate to identify needed improvements and to ensure effectiveness of federal and contractor corrective actions.'' In addition, the Recommendation notes ''that DOE has not effectively conducted oversight and enforcement of its existing requirements.'' Therefore, the scope and implementation of the existing criteria and review approaches should be standardized and improved. The Board believes that DOE's suggested rewording addresses this issue and is appropriate.	1. In its role as a regulator, by the end of 2016, standardize and improve implementation of its criteria and review approach to confirm that all sites with defense nuclear facilities:
Regarding Action 2c, as written, it is not clear that you may have intended for ''facility-specific drill programs'' to mean drill programs for facility operators, who, as part of conduct of operations, take actions under abnormal and emergency operating procedures to mitigate conditions or that bring facilities into safe shut-down, separate from actions taken by the emergency response organization. DOE recommends changing this action to read, ''including requirements that address facility conduct of operations drill programs and the interface with emergency response organization team drills.''	The Board acknowledges that the meaning of ''facility-specific drill programs'' needs to be clarified. The use of this term was intended to address the response of facility operators during emergency events and their interactions with emergency response personnel. The Board believes that DOE's suggested rewording addresses this need for clarification and is appropriate.	2.c Criteria for training and drills, including requirements that address facility conduct of operations drill programs and the interface with emergency response organization team drills.

DISPOSITION OF DOE COMMENTS ON DRAFT RECOMMENDATION 2014–1—Continued

DOE comment	Board response	Revised wording
Regarding Action 2e, the intent of this element is unclear since the Department already has continuous improvement processes in place and processes for including lessons learned during implementation of DOE directives into future directive revisions. In addition, Action 2e appears to imply that improvement should be made to the emergency management directive on a one-time basis and that the directive should not be changed until after program reviews called for in Action 1 are completed. The Department recommends a clarification of the intent of this action.	Based on DOE's comment, the Board acknowledges that clarification of the intent of this element is necessary. The clarification that DOE requested can be accomplished by phrasing the required element more simply as ''Vulnerabilities identified during independent assessments''.	2.e Vulnerabilities identified during independent assessments.

[FR Doc. 2014–22510 Filed 9–22–14; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC14–144–000.

Applicants: Broken Bow Wind II, LLC.

Description: Joint Application for Order Authorizing Acquisition and Disposition of Jurisdictional Facilities Under Section 203 of the Federal Power Act Broken Bow Wind II, LLC, et al.

Filed Date: 9/15/14.

Accession Number: 20140915–5218.

Comments Due: 5 p.m. ET 10/6/14.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG14–104–000.

Applicants: Solar Star California XIII, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Solar Star California XIII, LLC.

Filed Date: 9/15/14.

Accession Number: 20140915–5203.

Comments Due: 5 p.m. ET 10/6/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER09–1224–007.

Applicants: Entergy Operating Companies.

Description: Entergy Operating Companies Service Schedule MSS–3 Bandwidth Formula Comprehensive Recalculation.

Filed Date: 9/15/14.

Accession Number: 20140915–5223.

Comments Due: 5 p.m. ET 10/6/14.

Docket Numbers: ER10–3184–002; *ER10–2805–002; ER10–2564–004; ER10–2600–004; ER10–2289–004*

Applicants: FortisUS Energy Corporation, Central Hudson Gas & Electric Corporation, Tucson Electric Power Company, UNS Electric, Inc., UniSource Energy Development Company.

Description: Notice of Non-Material Change in Status of FortisUS Energy Corporation, et al.

Filed Date: 9/15/14.

Accession Number: 20140915–5219.

Comments Due: 5 p.m. ET 10/6/14.

Docket Numbers: ER14–2882–000.

Applicants: The Empire District Electric Company.

Description: Compliance filing per 35: Revised Protocols to be effective 4/1/2015.

Filed Date: 9/15/14.

Accession Number: 20140915–5174.

Comments Due: 5 p.m. ET 10/6/14.

Docket Numbers: ER14–2883–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Revisions to OATT Sched 6A Modify Black Start Comp and Add Black Start Backstop to be effective 11/15/2014.

Filed Date: 9/15/14.

Accession Number: 20140915–5175.

Comments Due: 5 p.m. ET 10/6/14.

Docket Numbers: ER14–2884–000.

Applicants: KCP&L Greater Missouri Operations Company.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Formula Rate Protocols Filing to be effective 3/1/2015.

Filed Date: 9/15/14.

Accession Number: 20140915–5176.

Comments Due: 5 p.m. ET 10/6/14.

Docket Numbers: ER14–2885–000.

Applicants: Seiling Wind Interconnection Services, LLC.

Description: Baseline eTariff Filing per 35.1: Seiling Interconnection, Seiling I and Seiling II Shared Facilities Agreement to be effective 10/1/2014.

Filed Date: 9/16/14.

Accession Number: 20140916–5056.

Comments Due: 5 p.m. ET 10/7/14.

Docket Numbers: ER14–2886–000.

Applicants: GDF SUEZ Energy Marketing NA, Inc.

Description: Request of GDF SUEZ Energy Marketing NA, Inc. for Limited Waiver of the ISO New England, Inc. Tariff.

Filed Date: 9/15/14.

Accession Number: 20140915–5224.

Comments Due: 5 p.m. ET 10/6/14.

Docket Numbers: ER14–2887–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Section 2.2 and Attachment F Revisions to be effective 12/1/2014.

Filed Date: 9/16/14.

Accession Number: 20140916–5093.

Comments Due: 5 p.m. ET 10/7/14.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD14–13–000.

Applicants: North American Electric Reliability Corporation.

Description: Petition of the North American Electric Reliability Corporation for Approval of Proposed Reliability Standard NUC–001–3.

Filed Date: 9/15/14.

Accession Number: 20140915–5206.

Comments Due: 5 p.m. ET 10/15/14.

Docket Numbers: RR14–7–000.

Applicants: North American Electric Reliability Corporation.

Description: Petition of the North American Electric Reliability Corporation for Approval of Amendments to Regional Reliability Standards Development Procedure of the Northeast Power Coordinating Council, Inc.

Filed Date: 9/15/14.

Accession Number: 20140915–5207.
Comments Due: 5 p.m. ET 10/6/14.

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 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 16, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–22581 Filed 9–22–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC14–145–000.
Applicants: American Transmission Company LLC.
Description: Application of American Transmission Company LLC for Authority to Acquire Transmission Facilities Under Section 203 of the Federal Power Act.
Filed Date: 9/16/14.
Accession Number: 20140916–5131.
Comments Due: 5 p.m. ET 10/7/14.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG14–105–000.
Applicants: Indeck Wharton LLC.
Description: Self-Certification as Exempt Wholesale Generator of Indeck Wharton LLC.
Filed Date: 9/16/14.
Accession Number: 20140916–5203.
Comments Due: 5 p.m. ET 10/7/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–303–000.
Applicants: Virginia Electric and Power Company, Dominion Marketing Affiliates.
Description: Change in Status Nuclear Waiver of Dominion Resources Services, Inc.
Filed Date: 9/16/14.
Accession Number: 20140916–5130.
Comments Due: 5 p.m. ET 10/7/14.

Docket Numbers: ER14–1386–003; ER14–2484–001; ER14–2834–001.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation Motion to Modify Effective Date of Tariff Revisions, Request for Shortened Response Time, and Request for Limited Waiver.
Filed Date: 9/16/14.
Accession Number: 20140916–5140.
Comments Due: 5 p.m. ET 10/7/14.

Docket Numbers: ER14–2518–001.
Applicants: New York Independent System Operator, Inc.
Description: Tariff Amendment per 35.17(b): NYISO filing: change outage states effective date from 11/1/14 to 2/1/15 to be effective 2/1/2015.
Filed Date: 9/16/14.
Accession Number: 20140916–5144.
Comments Due: 5 p.m. ET 10/7/14.

Docket Numbers: ER14–2597–001.
Applicants: Town of Hanover.
Description: Tariff Amendment per 35.17(b): Amended MBR Tariff Application to be effective 10/15/2014.
Filed Date: 9/16/14.
Accession Number: 20140916–5132.
Comments Due: 5 p.m. ET 10/7/14.

Docket Numbers: ER14–2888–000.
Applicants: Mississippi Power Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): PBOP 2014 Filing to be effective 1/1/2014.
Filed Date: 9/16/14.
Accession Number: 20140916–5162.
Comments Due: 5 p.m. ET 10/7/14.

Docket Numbers: ER14–2889–000.
Applicants: Georgia Power Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2014 PBOP Filing to be effective 1/1/2014.
Filed Date: 9/16/14.
Accession Number: 20140916–5163.
Comments Due: 5 p.m. ET 10/7/14.

Docket Numbers: ER14–2890–000.
Applicants: Southern Electric Generating Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): SEGCO 2014 PBOP Filing to be effective 1/1/2014.
Filed Date: 9/16/14.
Accession Number: 20140916–5164.
Comments Due: 5 p.m. ET 10/7/14.

Docket Numbers: ER14–2891–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 1606R1 American Electric Power NITSA and NOA to be effective 6/20/2014.
Filed Date: 9/16/14.
Accession Number: 20140916–5197.
Comments Due: 5 p.m. ET 10/7/14.

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 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 16, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–22582 Filed 9–22–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0352; FRL–9916–35–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Industrial, Commercial, and Institutional Boilers and Process Heaters (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''NESHAP for Industrial, Commercial, and Institutional Boilers and Process Heaters (Renewal)'' (EPA ICR No. 2028.08, OMB Control No. 2060–0551), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*). This is a proposed revision of the ICR, which is currently approved through September 30, 2014. Public comments were previously requested via the **Federal Register** (78 FR 35023) on June 11, 2013 during a 60-day comment period. This notice allows for an additional 30 days for public

comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor, and a person is not required, to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before October 23, 2014.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0352, to: (1) EPA online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Industrial, Commercial, and Institutional Boilers and Process Heaters apply to existing and new industrial, commercial, and institutional boilers and process heaters located at major sources of HAP. In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NESHAP. Any owner/operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office.

Form Numbers: None.

Respondents/affected entities: Owners and operators of industrial, commercial, and institutional boilers and process heaters.

Respondent's obligation to respond: Mandatory (40 CFR Part 63, Subpart DDDDD).

Estimated number of respondents: 1,778 (total).

Frequency of response: Initially, semiannually, annually, and biennially.

Total estimated burden: 492,702 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $155,628,678 (per year), which includes $108,235,205 in both annualized capital and operation & maintenance costs combined.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2014–22558 Filed 9–22–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–UST–2010–0625; FRL–9915–84–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Underground Storage Tanks: Technical and Financial Requirements, and State Program Approval Procedures (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Underground Storage Tanks: Technical and Financial Requirements, and State Program Approval Procedures (Renewal)'' (EPA ICR No. 1360.13, OMB Control No. 2050–0068) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through September 30, 2014. Public comments were previously requested via the **Federal Register** (79 FR 22487) on April 22, 2014 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before October 23, 2014.

ADDRESSES: Submit your comments, referencing Docket ID Number Docket ID No. EPA–HQ–UST–2010–0625 online using *www.regulations.gov* (our preferred method), by email to *mcdermott.elizabeth@epa.gov,* or by mail to: (1) EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460 and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Elizabeth McDermott, Office of Underground Storage Tanks, Mail Code 5401P, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (703) 603–7175; fax number: (703) 603–0175; email address: *mcdermott.elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's

public docket, visit *http://www.epa.gov/dockets.*

Abstract: Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, requires that EPA develop standards for Underground Storage Tank (UST) systems as may be necessary to protect human health and the environment, and procedures for approving state programs in lieu of the federal program. EPA promulgated technical and financial requirements for owners and operators of USTs at 40 CFR part 280, and state program approval procedures at 40 CFR part 281. This ICR is a comprehensive presentation of all information collection requirements contained at 40 CFR parts 280 and 281.

The data collected for new and existing UST system operations and financial requirements are used by owners and operators and/or EPA or the implementing agency to monitor results of testing, inspections, and operation of UST systems, as well as to demonstrate compliance with regulations.

Form Numbers: None.

Respondents/affected entities: Owners and operators of USTs.

Respondent's obligation to respond: Mandatory per 40 CFR Parts 280 and 281.

Estimated number of respondents: 211,686.

Frequency of response: Once and on occasion.

Total estimated burden: 5,068,897 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $375,584,849 (per year), includes $223,435,559 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 1,684,661 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to an update in the respondent universe and burden estimates based on updated data from the Office of Underground Storage Tanks (OUST) and the regulated community. EPA also slightly reduced the burden associated with notification requirements.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2014–22557 Filed 9–22–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, September 16, 2014 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

Federal Register Citation of Previous Announcement—79 FR 54720 (September 12, 2014)

CHANGE IN THE MEETING: The Commission also discussed internal personnel rules and internal rules and practices.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2014–22686 Filed 9–19–14; 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 October 17, 2014.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *Louisiana Community Bancorp, Inc.,* DeRidder, Louisiana; to acquire 100 percent of the voting shares of, and merge with Coastal Commerce Bancshares, Inc., and thereby indirectly acquire Coastal Commerce Bank, both in Houma, Louisiana.

Board of Governors of the Federal Reserve System, September 18, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–22554 Filed 9–22–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR Part 238), and Regulation MM (12 CFR Part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan 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 application also will 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 HOLA (12 U.S.C. 1467a(e)). 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 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 17, 2014.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *MB Bancorp, Inc.,* Forest Hill, Maryland; to become a savings and loan holding company through the acquisition of 100 percent of the voting securities of Madison Bank of Maryland, Forest Hill, Maryland, in connection with its conversion from a mutual to stock form.

Board of Governors of the Federal Reserve System, September 18, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–22553 Filed 9–22–14; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0153; Docket 2014–0055; Sequence 11]

Federal Acquisition Regulation; Submission to OMB for Review; OMB Circular A–119

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Regulatory Secretariat Division (MVCB) will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning OMB Circular A–119. A notice was published in the **Federal Register** at 79 FR 38892 on July 9, 2014. No comments were received.

DATES: Submit comments on or before October 23, 2014.

ADDRESSES: Submit comments identified by Information Collection 9000–0153, OMB Circular A–119, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number 9000–0153. Select the link ''Comment Now'' that corresponds with ''Information Collection 9000–0153, OMB Circular A–119''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 9000–0153, OMB Circular A–119'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Hada Flowers/IC 9000–0153, OMB Circular A–119.

Instructions: Please submit comments only and cite Information Collection 9000–0153, OMB Circular A–119, in all correspondence related to this collection. 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. Michael O. Jackson, Procurement Analyst, Acquisition Policy Division, GSA 202–208–4949 or email *michaelo.jackson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

On February 19, 1998, a revised OMB Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' was published in the **Federal Register** at 63 FR 8545, February 19, 1998. FAR Subparts 11.1 and 11.2 were revised and a solicitation provision was added at 52.211–7, Alternatives to Government-Unique Standards, to implement the requirements of the revised OMB circular. If an alternative standard is proposed, the offeror must furnish data and/or information regarding the alternative in sufficient detail for the Government to determine if it meets the Government's requirements. We believe the burden for FAR 52.211–7 to be negative, as it is purely a permissive means for offerors to propose reducing regulatory burden on a given solicitation. There are other places A–119 has an effect, though we believe these to be positive. One is by enabling the single process initiative. Another is the general replacement of Mil standards with commercial standards, e.g., ISO 9000. Also, A–119 is the basis for the language in FAR 53.105, which reduces the chaos in data standards development. The whole purpose of A–119 was to reduce regulatory burden by promoting the use of industry standards in lieu of federal ones.

To the extent that data on the annual frequency of the use of voluntary consensus standards under FAR 52.211–7 is not available, we believe 100 is reasonable. As an aside, FAR part 45 recognizes the use of voluntary consensus standards in the management of Government property. However, in these cases there is no Government standard per se, with the voluntary consensus standard serving as the Government standard. Consequently, when under part 45 voluntary consensus standards are used, they are not an alternative to a Government standard under FAR 52.211–7.

B. Annual Reporting Burden

Respondents: 100.

Responses per Respondent: 1.

Total Responses: 100.

Hours per Response: 1.

Total Burden Hours: 100.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0153, OMB Circular A–119, in all correspondence.

Dated: September 17, 2014.

Edward Loeb,

Acting Director, Federal Acquisition Policy Division, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2014–22575 Filed 9–22–14; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Docket 2014–0055; Sequence 12]

Submission to OMB for Review; Prohibition on Acquisition of Products Produced by Forced or Indentured Child Labor

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Regulatory Secretariat Division (MVCB) will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding prohibition on acquisition of products produced by forced or indentured child labor. A notice was published in the **Federal Register** at 79 FR 38894 on July 9, 2014. No comments were received.

DATES: Submit comments on or before: October 23, 2014.

ADDRESSES: Submit comments identified by Information Collection 9000–0155, Prohibition on Acquisition of Products Produced by Forced or Indentured Child Labor, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number 9000–0155. Select the link ''Comment Now'' that corresponds with ''Information Collection 9000–0155, Prohibition on Acquisition of Products Produced by Forced or Indentured Child Labor''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 9000–0155, Prohibition on Acquisition of Products Produced by Forced or Indentured Child Labor'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Hada Flowers/IC 9000–0155, Prohibition on Acquisition of Products Produced by Forced or Indentured Child Labor.

Instructions: Please submit comments only and cite Information Collection 9000–0155, Prohibition on Acquisition of Products Produced by Forced or Indentured Child Labor, in all correspondence related to this collection. 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. Michael O. Jackson, Procurement Analyst, Acquisition Policy Division, GSA 202–208–4949 or email *michaelo.jackson@gsa.gov*

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection complies with Executive Order 13126, Prohibition on Acquisition of Products Produced by Forced or Indentured Child Labor. Executive Order 13126 requires that this prohibition be enforced within the federal acquisition system by means of: (1) A provision that requires the contractor to certify to the contracting officer that the contractor or, in the case of an incorporated contractor, a responsible official of the contractor has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under the contract and that, on the basis of those efforts, the contractor is unaware of any such use of child labor; and (2) A provision that obligates the contractor to cooperate fully in providing reasonable access to the contractor's records, documents, persons, or premises if reasonably requested by authorized officials of the contracting agency, the Department of the Treasury, or the Department of Justice, for the purpose of determining whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under the contract.

The information collection requirements of the Executive Order are evidenced via the certification requirements delineated at FAR 22.1505, 52.212–3, 52.222–18, and 52.222–19.

To eliminate some of the administrative burden on offerors who must submit the same information to various contracting offices, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) decided to amend the Federal Acquisition Regulation (FAR) to require offerors to submit representations and certifications electronically via the Business Partner Network (BPN), unless certain exceptions apply. Online Representations and Certifications Application (ORCA) was the specific application on the BPN to replace the paper based Representations and Certifications process. The change to the FAR was accomplished by FAR Case 2002–024. The BPN and ORCA systems have now been incorporated into the System for Award Management, also known as SAM.

B. Annual Reporting Burden

To date, there are 355,531 active registrants in SAM. Those registrants are required to complete the Representations and Certifications section of SAM. Of the 355,531 active registrants in SAM, 949 registrants identified their business concern as one that may supply an end product that is on the list of products requiring contractor certification as to Forced or Indentured Child Labor, identified by their country of origin. The 949 registrants will be used as the basis for the number of respondents. This number represents an increase from what was published in the **Federal Register** at 76 FR 42709 on July 19, 2011. No public comments were received in prior years that have challenged the validity of the Government's estimate.

Respondents: 949.

Responses per Respondent: 1.

Hours per Response: 0.325.

Total Burden Hours: 308.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control No. 9000–0155, Prohibition on Acquisition of Products Produced by Forced or Indentured Child Labor, in all correspondence.

Dated: September 17, 2014.

Edward Loeb,

Acting Director, Federal Acquisition Policy Division, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2014–22578 Filed 9–22–14; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Civil Society Listening Session on the U.S. Domestic Response to Female Genital Mutilation/Cutting (FGM/C)

Name: Civil Society Listening Session on the U.S. Domestic Response to FGM/C.

Date and Time: October 2, 2014, 2:30 p.m.–4:30 p.m.

Place: Hubert H. Humphrey Building, 200 Independence Avenue SW., Room 705A, Washington, DC 20201.

Attendance: Open, but RSVP required to *OGA.RSVP@hhs.gov.* If you are a foreign national, please note this in the subject line of your RSVP, and our office will contact you for additional biographical details to process your access to the meeting site. RSVP's must be received no later than Monday, September 22, 2014.

Purpose: The U.S. Department of Health and Human Services (HHS) will host a civil society listening session on the U.S. domestic response to FGM/C. The consultation is an opportunity for the U.S. government, including representatives from the White House and other U.S. federal agencies, to hear from members of civil society who are working to address FGM/C domestically (in the United States). More specifically, the session will seek to:

- Identify gaps in knowledge
- Identify gaps in services for survivors and girls at risk
- Identify lessons learned based on previous efforts
- Share success stories and best practices at the community level
- Suggest effective outreach strategies
- Make connections and identify opportunities for increased collaboration and next steps

Agenda: The session will be structured around four agenda items: (1) What is working, (2) lessons learned, (3) gaps in knowledge, support and services, and (4) opportunities for further collaboration between the U.S. government and civil society. Participants will be invited to speak for no more than three minutes on each topic. At the end of each agenda item, representatives from relevant federal agencies will have the opportunity to briefly respond and ask follow-up questions.

Participants: All individuals working on FGM/C in the United States are invited to attend, including members of:

- Public health and advocacy groups;
- Minority health organizations;
- Refugee and immigrant groups;
- Women's research, service and advocacy groups;
- Human rights groups;
- Faith-based groups; and
- Academic and scientific organizations.

Written comments are welcome and encouraged, even for those who are planning to attend in person. These comments should also be sent to *OGA.RSVP@hhs.gov.*

Dated: September 9, 2014.

Jimmy Kolker,

Assistant Secretary, Office of Global Affairs.

[FR Doc. 2014–22574 Filed 9–19–14; 11:15 am]

BILLING CODE 4150–38–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Blood and Tissue Safety and Availability

AGENCY: Office of the Secretary, Office of the Assistant Secretary for Health, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the Advisory Committee on Blood and Tissue Safety and Availability (ACBTSA) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will take place Thursday, November 13, 2014, from 8:00 a.m. to 3:10 p.m., and Friday, November 14, 2014, from 8:00 a.m. to 3:45 p.m.

ADDRESSES: Veteran Health Administration National Conference Center, 2011 Crystal Drive, Suite 150, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. James Berger, Designated Federal Officer, ACBTSA, and Senior Advisor for Blood and Tissue Safety Policy, Office of HIV/AIDS and Infectious Disease Policy, Office of the Assistant Secretary for Health, Department of Health and Human Services, 1101 Wootton Parkway, Suite 250, Rockville, MD 20852. Phone: (240) 453–8803; Fax (240) 453–8456; Email *ACBTSA@hhs.gov.*

SUPPLEMENTARY INFORMATION: The ACBTSA shall provide advice to the Secretary through the Assistant Secretary for Health. The Committee advises on a range of policy issues to include: (1) Identification of public health issues through surveillance of blood and tissue safety issues with national biovigilance data tools; (2) identification of public health issues that affect availability of blood, blood products, and tissues; (3) broad public health, ethical, and legal issues related to the safety of blood, blood products, and tissues; (4) the impact of various economic factors (e.g., product cost and supply) on safety and availability of blood, blood products, and tissues; (5) risk communications related to blood transfusion and tissue transplantation; and (6) identification of infectious disease transmission issues for blood, organs, blood stem cells and tissues. The Advisory Committee has met regularly since its establishment in 1997.

At the November 2014 meeting the ACBTSA will hear updates on recent activities of the Department and its agencies in support of previous Committee recommendations. Past recommendations made by the ACBTSA may be viewed at *www.hhs.gov/bloodsafety.*

The focus of the meeting will be to address the implications of hemoglobin S testing in blood donors. In particular, the Committee will focus on the ethics of hemoglobin S testing as well as the perspective of affected members of the blood collecting and using community. The Committee will also continue its discussion of the current blood donor policy for men who have sex with men. A portion of the meeting will also be devoted to an emerging infectious disease, babesia, which could potentially impact the blood supply.

The public will have opportunities to present their views to the Committee during public comment sessions scheduled for November 13, 2014, and November 14, 2014. Comments regarding the men who have sex with men blood donation policy should be presented on November 13, 2014. Comments regarding hemoglobin S testing and emerging infectious disease testing should be presented on November 14, 2014. Comments will be limited to five minutes per speaker and must be pertinent to the discussion. Pre-registration is required for participation in the public comment sessions. Any member of the public who would like to participate in these sessions is encouraged to contact the Designated Federal Officer at his/her earliest convenience to register for time (limited to 5 minutes) and registration must be prior to close of business on November 10, 2014. If it is not possible to provide 30 copies of the material to be distributed, then individuals are requested to provide a minimum of one (1) copy of the document(s) to be distributed prior to the close of business on November 10, 2014. It is also requested that any member of the public

who wishes to provide comments to the Committee utilizing electronic data projection submit the necessary material to the Designated Federal Officer prior to the close of business on November 10, 2014.

Dated: September 17, 2014.

James J. Berger,

Designated Federal Officer and Senior Advisor for Blood and Tissue Safety Policy.

[FR Doc. 2014–22527 Filed 9–22–14; 8:45 am]

BILLING CODE 4150–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIAC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

Times and Dates: 8:30 a.m.–5:00 p.m., November 5, 2014; 8:30 a.m.–12:00 p.m., November 6, 2014.

Place: CDC, Century Center, 2500 Century Parkway NE., Room 1200/1201, Atlanta, Georgia 30345.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people. This meeting will also be Webcast, please see information below.

Purpose: This Committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services (HHS); the Assistant Secretary for Health; the Director, Centers for Disease Control and Prevention; the Commissioner, Food and Drug Administration (FDA); and the Administrator, Centers for Medicare and Medicaid Services (CMS). The advice and guidance pertain to general issues related to improvement in clinical laboratory quality and laboratory medicine practice and specific questions related to possible revision of the Clinical Laboratory Improvement Amendment (CLIA) standards. Examples include providing guidance on studies designed to improve safety, effectiveness, efficiency, timeliness, equity, and patient-centeredness of laboratory services; revisions to the standards under which clinical laboratories are regulated; the impact of proposed revisions to the standards on medical and laboratory practice; and the modification of the standards and provision of non-regulatory guidelines to accommodate technological advances, such as new test methods and the electronic transmission of laboratory information.

Matters for Discussion: The agenda will include agency updates from CDC, CMS, and FDA. Presentations and discussions will include the FDA Draft Guidance on Laboratory Developed Tests; CLIA-waived testing, including the process and criteria for waiver approval; a report from the workgroup charged with providing input to CLIAC regarding the acceptability and application of virtual cross-matching in lieu of serologic cross-matching for transplantation; and issues related to laboratory biosafety in the United States.

Agenda items are subject to change as priorities dictate.

Webcast: The meeting will also be Webcast. Persons interested in viewing the Webcast can access information at: *http://wwwn.cdc.gov/cliac/default.aspx*

Online Registration Required: All people attending the CLIAC meeting in-person are required to register for the meeting online at least 5 business days in advance for U.S. citizens and at least 10 business days in advance for international registrants. Register at *http://wwwn.cdc.gov/cliac/default.aspx* by scrolling down and clicking the link under ''Meeting Registration'' and completing all forms according to the instructions given. Please complete all the required fields before submitting your registration and submit no later than October 29, 2014 for U.S. registrants and October 22, 2014 for international registrants.

Providing Oral or Written Comments: It is the policy of CLIAC to accept written public comments and provide a brief period for oral public comments whenever possible.

Oral Comments: In general, each individual or group requesting to make oral comments will be limited to a total time of five minutes (unless otherwise indicated). Speakers must also submit their comments in writing for inclusion in the meeting's Summary Report. To assure adequate time is scheduled for public comments, speakers should notify the contact person below at least one week prior to the meeting date.

Written Comments: For individuals or groups unable to attend the meeting, CLIAC accepts written comments until the date of the meeting (unless otherwise stated). However, it is requested that comments be submitted at least one week prior to the meeting date so that the comments may be made available to the Committee for their consideration and public distribution. Written comments, one hard copy with original signature, should be provided to the contact person below, and will be included in the meeting's Summary Report.

Availability of Meeting Materials: To support the green initiatives of the federal government, the CLIAC meeting materials will be made available to the Committee and the public in electronic format (PDF) on the internet instead of by printed copy. Check the CLIAC Web site on the day of the meeting for materials. Note: If using a mobile device to access the materials, please verify that the device's browser is able to download the files from the CDC's Web site before the meeting. *http://wwwn.cdc.gov/cliac/cliac_meeting_all_documents.aspx*. Alternatively, the files can be downloaded to a computer and then emailed to the portable device. An internet connection, power source and limited hard copies may be available at the meeting location, but cannot be guaranteed.

Contact Person for Additional Information: Nancy Anderson, Chief, Laboratory Practice Standards Branch, Division of Laboratory Science and Standards, Laboratory Science, Policy and Practice Program Office, Office of Surveillance, Epidemiology and Laboratory Services, CDC, 1600 Clifton Road NE., Mailstop F–11, Atlanta, Georgia 30329–4018; telephone (404) 498–2741; fax (404) 498–2210; or via email at *NAnderson@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Claudette Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2014–22532 Filed 9–22–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The Centers for Disease Control and Prevention (CDC) Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review, Epi-Centers for the Prevention of Healthcare-Associated Infections, Antimicrobial Resistance and Adverse Events, Funding Opportunity Announcement (FOA) CK11–0010401SUPP14, held an initial review of applications on June 3, 2014. Due to administrative oversight, a notice was not published in the **Federal Register**.

A notice should have published prior to May 16, 2014 according to the 15 day notice requirement of the Federal Advisory Committee Act (FACA) *http://intranet.cdc.gov/maso/cmppa/pdfs/faca.pdf* and the GSA Final Rule *http://www.gsa.gov/graphics/ogp/FACAFinalRule_R2E-cNZ_0Z5RDZ-i34K-pR.pdf.*

The intent of 15 day prior notice is to advise the public of scheduled meetings open to the public. The meeting of June 3, 2014 was a closed meeting, having met the standard for exemptions to open meeting requirements due to the personal and/or proprietary information included in grant applications. Public participation was not impacted as a result of the notice not getting published.

Contact Person for More Information: Catherine Ramadei, Acting Chief, Federal Advisory Committee Management Branch, Management

Analysis and Services Office, 1600 Clifton Rd. NE., MS: K–48, Atlanta, GA 30329, email: *cyr9@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and Agency for Toxic Substances and Disease Registry.

Claudette Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2014–22533 Filed 9–22–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Health Statistics (BSC, NCHS)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), National Center for Health Statistics (NCHS) announces the following meeting of the aforementioned committee:

Times and Dates: 11:00 a.m.–5:30 p.m., October 29, 2014; 8:30 a.m.–1:00 p.m., October 30, 2014.

Place: NCHS Headquarters, 3311 Toledo Road, Hyattsville, Maryland 20782.

Status: This meeting is open to the public; however, visitors must be processed in accordance with established federal policies and procedures. For foreign nationals or non-U.S. citizens, pre-approval is required (please contact Gwen Mustaf, 301–458–4500, *glm4@cdc.gov,* or Virginia Cain, *vcain@cdc.gov* at least 10 days in advance for requirements). All visitors are required to present a valid form of picture identification issued by a state, federal or international government. As required by the Federal Property Management Regulations, Title 41, Code of Federal Regulation, Subpart 101–20.301, all persons entering in or on Federal controlled property and their packages, briefcases, and other containers in their immediate possession are subject to being x-rayed and inspected. Federal law prohibits the knowing possession or the causing to be present of firearms, explosives and other dangerous weapons and illegal substances. The meeting room accommodates approximately 100 people.

Purpose: This committee is charged with providing advice and making recommendations to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NCHS, regarding the scientific and technical program goals and objectives, strategies, and priorities of NCHS.

Matters for Discussion: The agenda will include:

1. Welcome remarks by the Director, NCHS
2. National Health & Nutrition Examination Survey DNA Collection Plans
3. Office of Research and Methodology update
4. National Health Interview Survey Sexual Orientation Data presentation

Requests to make oral presentations should be submitted in writing to the contact person listed below. All requests must contain the name, address, telephone number, and organizational affiliation of the presenter.

Written comments should not exceed five single-spaced typed pages in length and must be received by October 17, 2014.

The agenda items are subject to change as priorities dictate.

Contact Person for More Information: Virginia S. Cain, Ph.D., Director of Extramural Research, NCHS/CDC, 3311 Toledo Road, Room 7208, Hyattsville, Maryland 20782, Telephone: (301) 458–4500, Fax: (301) 458–4024.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Claudette Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2014–22529 Filed 9–22–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CDC–2014–0014, Docket Number NIOSH–275]

Proposed National Total Worker Health™ Agenda

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of opportunity to provide oral comments at three town-hall sessions, and the opportunity to provide written comments.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the opportunity for comment on the Proposed National Total Worker Health™ Agenda. To view the Agenda and submit written comments, visit, *www.regulations.gov,* and enter CDC–2014–0014 in the search field and click ''Search.'' There is also an opportunity to submit oral comments at one of three town-hall sessions during the following two scientific meetings: The 1st International Symposium to Advance Total Worker Health™ and The Healthier Federal Workers Conference. For information on how to register for the conferences and town-hall sessions see the Supplementary Section. All comments are welcome, but NIOSH specifically seeks those that address the following questions:

- Do you see your own organization's goals reflected in the Proposed National Total Worker Health™ Agenda?
- What are the bridges between your own work and the Proposed National Total Worker Health™ Agenda?
- Are there any missing components or gaps in the Proposed National Total Worker Health™ Agenda?

DATES:

Meeting date and time:

(1) October 6–8, 2014; 2 town-hall sessions: October 7, 2014, 12:30–1:45 p.m. Eastern Time and 5–6:15 p.m. Eastern Time

(2) October 9, 2014, 1:15–2:30 p.m. Eastern Time

Registration to speak: Participants who wish to speak during one of the town-hall sessions must register by sending an email to *stamers@cdc.gov* by October 1, 2014.

Public comment period: Comments must be received by December 22, 2014.

ADDRESSES: Both meetings will be held at the National Institutes of Health, Natcher Conference Center (Bldg. 45), 9000 Rockville Pike, Bethesda, Maryland 20892.

Security Considerations: Due to mandatory security clearance procedures, in-person attendees must present valid government-issued picture identification (passport for non-U.S. citizens) to security personnel upon entering the NIH Campus.

You may submit comments, identified by CDC–2014–0014 and Docket Number NIOSH–275, by one of the following three methods:

- *Internet: http://www.regulations.gov.* Enter CDC–2014–0014 in the search field and click ''Search.''
- *Mail:* National Institute for Occupational Safety and Health, NIOSH Docket Office, 1090 Tusculum Avenue, MS C–34, Cincinnati, Ohio 45226–1998. Identify the submission for NIOSH Docket-275.
- *In-person:* Only individuals who are registered for one and/or both conferences and one of three town-hall

sessions will have the opportunity to provide oral public comment.

Instructions: All information received in response to this notice must include the agency name and docket number [CDC–2014–0014; NIOSH–275]. All electronic comments should be formatted as Microsoft Word. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. All information received in response to this notice will also be available for public examination and copying at the NIOSH Docket Office, 1150 Tusculum Avenue, Room 109, Cincinnati, OH 45226–1998.

FOR FURTHER INFORMATION CONTACT: Sara L. Tamers, Ph.D. MPH, NIOSH/CDC, Telephone: (202) 245–0677, Fax: (202) 245–0664, *STamers@cdc.gov*.

SUPPLEMENTARY INFORMATION:

Attendance: The town-hall sessions, and oral comments during the town-hall sessions, are open to participants who have registered and paid to attend one or both of the conferences, limited only by the capacity of the conference room (up to 140 participants).

Information on the conferences and town-hall sessions:

- The 1st International Symposium to Advance Total Worker Health™ (October 6–8, 2014; 2 town-hall sessions: October 7, 2014, 12:30–1:45 p.m. Eastern Time and 5–6:15 p.m. Eastern Time): *http://www.eagleson.org/conferences/total-worker-health.*
- The Healthier Federal Workers Conference (October 8–10, 2014; 1 town-hall session: October 9, 2014, 1:15–2:30 p.m. Eastern Time): *http://www.eagleson.org/conferences/healthier-federal-workers-2014.*

Registration for both conferences may be done up until the day of each conference.

Registration to speak: Participants who wish to speak during one of the town-hall sessions must register by sending an email to *stamers@cdc.gov* by October 1, 2014. Each speaker will have 5 minutes to speak. It is recommended that the speaker not read written comments, but rather highlight critical points in the written material that should be submitted to the docket. Please note that you may only sign up for one town-hall session. An email confirming registration will be sent from NIOSH and will include details needed to participate. Oral comments made at the meeting will be recorded and included in docket NIOSH–275. All relevant comments received will be posted without change to NIOSH–275 including any personal information provided.

Background: Total Worker Health™ is a strategy integrating occupational safety and health protection with health promotion to prevent worker injury and illness and to advance health and well-being. The town-hall sessions will be forums for NIOSH to receive stakeholder input on the draft National Total Worker Health™ Agenda. This Agenda is meant to stimulate innovative research, practical applications, policy guidance, and capacity building of Total Worker Health™ practitioners to improve workplace practices as they relate to Total Worker Health™. For more information, visit: *http://www.cdc.gov/niosh/TWH/.*

Dated: September 15, 2014.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2014–22465 Filed 9–22–14; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention (CDC)—State, Tribal, Local and Territorial (STLT) Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned subcommittee:

Time and Date: 8:30 a.m.–4:00 p.m. e.d.t., October 10, 2014.

Place: CDC, Building 19, Auditorium B3, 1600 Clifton Road NE., Atlanta, Georgia 30333.

Status: This meeting is open to the public, limited only by the space available. The meeting room accommodates approximately 20 people. The public is welcome to participate during the public comment, which is tentatively scheduled from 3:15 p.m. to 3:35 p.m. This meeting is also available by teleconference. Please dial (888) 233–0592 and enter code 33288611.

Web Links:

Windows Media-1: *http://wm.onlinevideoservice.com/CDC1*

Flash-2: *http://www.onlinevideoservice.com/clients/CDC/?mount=CDC3*

Technical Support 404–639–3737

Purpose: The Subcommittee will provide information through the ACD to the CDC Director on strategies and future needs and challenges faced by State, Tribal, Local and Territorial health agencies, and will provide guidance on opportunities for CDC.

Matters for Discussion: The STLT Subcommittee members will discuss progress on implementation of ACD-adopted recommendations related to the health department of the future and how CDC can best support STLT health departments in the transforming health system.

The agenda is subject to change as priorities dictate.

Contact Person for More Information: Judith A. Monroe, M.D., FAAFP, Designated Federal Officer, State, Tribal, Local and Territorial Subcommittee, Advisory Committee to the Director, CDC, 1600 Clifton Road NE., M/S E–70, Atlanta, Georgia 30333, Telephone (404) 498–0300, Email: *OSTLTSDirector@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Claudette A. Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2014–22528 Filed 9–22–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned committee:

Time and Dates: 1:00 p.m.–4:00 p.m., E.T., November 7, 2014.

Place: Teleconference and webinar format.

Status: Open to the public, limited only by the space available on the webinar system, which accommodates a maximum of 100 people (no limit on the teleconference line). If you wish to attend by webinar, please see the NIOSH Web site to register (*http://www.cdc.gov/niosh/bsc/*) or call (404) 498–2539 at least 48 hours in advance. Teleconference is available toll-free; please dial (888) 397–9578, Participant Pass Code 63257516.

Purpose: The Secretary, the Assistant Secretary for Health, and by delegation the Director, Centers for Disease Control and Prevention, are authorized under Sections 301 and 308 of the Public Health Service Act to conduct directly or by grants or contracts, research, experiments, and demonstrations relating to occupational safety and health and to mine health. The Board of Scientific Counselors shall provide guidance to the Director, National Institute for Occupational

Safety and Health on research and prevention programs. Specifically, the Board shall provide guidance on the Institute's research activities related to developing and evaluating hypotheses, systematically documenting findings and disseminating results. The Board shall evaluate the degree to which the activities of the National Institute for Occupational Safety and Health: (1) Conform to appropriate scientific standards, (2) address current, relevant needs, and (3) produce intended results.

Matters for Discussion: NIOSH implementation of National Academies' recommendations for the Respiratory Disease Research Program, the Construction Research Program, and the Traumatic Injuries Research Program.

Agenda items are subject to change as priorities dictate. An agenda is also posted on the NIOSH Web site (*http://www.cdc.gov/niosh/bsc/*).

Contact Person for More Information: John Decker, Executive Secretary, BSC, NIOSH, CDC, 1600 Clifton Road NE., MS–E20, Atlanta, GA 30329–4018, Telephone: (404) 498–2500, fax (404) 498–2526.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and the Agency for Toxic Substances and Disease Registry.

Claudette Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 2014–22530 Filed 9–22–14; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Centers for Disease Control and Prevention

Board of Scientific Counselors, Office of Public Health Preparedness and Response, (BSC, OPHPR)

In accordance with section 10 (a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Times and Dates:

10:00 a.m.–5:15 p.m., E.T., October 27, 2014
8:00 a.m.–4:15 p.m., E.T., October 28, 2014

Place: Centers for Disease Control and Prevention (CDC), Global Communications Center, Building 19, Auditorium B3, 1600 Clifton Road NE., Atlanta, Georgia 30333.

Status: Open to the public limited only by the space available. The meeting room will accommodate up to 90 people. Public participants should pre-register for the meeting as described in Additional Information for Public Participants. Members of the public that wish to attend this meeting should pre-register by submitting the following information by email, facsimile, or phone (see Contact Person for More Information) no later than 12:00 noon (EDT) on Monday, October 20, 2014:

- Full Name
- Organizational Affiliation
- Complete Mailing Address
- Citizenship
- Phone Number or Email Address

Purpose: This Board is charged with providing advice and guidance to the Secretary, Department of Health and Human Services (HHS), the Assistant Secretary for Health (ASH), the Director, Centers for Disease Control and Prevention (CDC), and the Director, Office of Public Health Preparedness and Response (OPHPR), concerning strategies and goals for the programs and research within OPHPR, monitoring the overall strategic direction and focus of the OPHPR Divisions and Offices, and administration and oversight of peer review of OPHPR scientific programs. For additional information about the Board, please visit: *http://www.cdc.gov/phpr/science/counselors.htm.*

Matters To Be Discussed: Day one of the meeting will cover briefings and BSC deliberation on the following topics: Interval updates from OPHPR Divisions and Offices; mental and behavioral health and emergency preparedness and response; and BSC liaison representative updates to the Board highlighting organizational activities relevant to the OPHPR mission.

Day two of the meeting will cover briefings and BSC deliberation on the following topics: Evolving capabilities of the Strategic National Stockpile, community resilience research updates, select agent regulations, social media and communication challenges during emergency response; National Health Security Preparedness Index Update; and OPHPR impact measurement.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Marquita Black, Office of Science and Public Health Practice, Executive Assistant, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop D–44, Atlanta, Georgia 30333, Telephone: (404) 639–7325; Facsimile: (404) 639–7977; Email: *OPHPR.BSC.Questions@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention, and Agency for Toxic Substances and Disease Registry.

Claudette Grant,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2014–22531 Filed 9–22–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3304–PN]

Medicare and Medicaid Program; Application From the Joint Commission for Continued Approval of Its Psychiatric Hospital Accreditation Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed notice.

SUMMARY: This proposed notice acknowledges the receipt of an application from the Joint Commission for continued recognition as a national accrediting organization for psychiatric hospitals that wish to participate in the Medicare or Medicaid programs. The statute requires that within 60 days of receipt of an organization's complete application, we publish a notice that identifies the national accrediting body making the request, describes the nature of the request, and provides at least a 30-day public comment period.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on October 23, 2014.

ADDRESSES: In commenting, refer to file code CMS–3304–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3304–PN, P.O. Box 8010, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3304–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written ONLY to the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Monda Shaver, (410) 786–3410.
Cindy Melanson, (410) 786–0310.
Patricia Chmielewski, (410) 786–6899.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services from a psychiatric hospital provided certain requirements are met. Section 1861(f) of the Social Security Act (the Act) establishes distinct criteria for facilities seeking designation as a psychiatric hospital. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 482 subpart E, specify the minimum conditions that a psychiatric hospital must meet to participate in the Medicare program, the scope of covered services and the conditions for Medicare payment for psychiatric hospitals.

Generally, to enter into an agreement, a psychiatric hospital must first be certified by a State Survey Agency as complying with the conditions or requirements set forth in part 482 subpart E of our regulations. Thereafter, the psychiatric hospital is subject to regular surveys by a State Survey Agency to determine whether it continues to meet these requirements. There is an alternative; however, to surveys by state agencies.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization that all applicable Medicare conditions are met or exceeded, we may treat the provider entity as having met those conditions, that is, we may ''deem'' the provider entity as having met the requirements. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

If an accrediting organization is recognized by the Secretary of the Department of Health and Human Services (the Secretary) as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program may be deemed to meet the Medicare conditions. A national accrediting organization applying for approval of its accreditation program under part 488, subpart A, must provide us with reasonable assurance that the accrediting organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of accrediting organizations are set forth at § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require an accrediting organization to reapply for continued approval of its accreditation program every 6 years or sooner as determined by CMS.

The Joint Commission's current term of approval for its psychiatric hospital accreditation program expires February 25, 2015.

II. Approval of Deeming Organizations

Section 1865(a)(2) of the Act and our regulations at § 488.8(a) require that our findings concerning review and approval of a national accrediting organization's requirements consider, among other factors, the applying accrediting organization's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide us with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of the Joint Commission's request for continued approval of its psychiatric hospital accreditation program. This notice also solicits public comment on whether the Joint Commission's requirements meet or exceed the Medicare conditions of participation (CoPs) for psychiatric hospitals.

III. Evaluation of Deeming Authority Request

The Joint Commission submitted all the necessary materials to enable us to make a determination concerning its request for continued approval of its psychiatric hospital accreditation program. This application was determined to be complete on July 30, 2014. Under Section 1865(a)(2) of the Act and our regulations at § 488.8 (Federal review of accrediting organizations), our review and evaluation of the Joint Commission will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of the Joint Commission's standards for psychiatric hospitals as compared with CMS' psychiatric hospital CoPs.
- The Joint Commission's survey process to determine the following:

++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

++ The comparability of the Joint Commission's processes to those of State Survey Agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

++ The Joint Commission's processes and procedures for monitoring a psychiatric hospital found out of compliance with the Joint Commission's program requirements. These monitoring procedures are used only when the Joint Commission identifies noncompliance. If noncompliance is identified through validation reviews or complaint surveys, the State Survey Agency monitors corrections as specified at § 488.7(d).

++ The Joint Commission's capacity to report deficiencies to the surveyed facilities and respond to a facility's plan of correction in a timely manner.

++ The Joint Commission's capacity to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ The adequacy of the Joint Commission's staff and other resources, and its financial viability.

++ The Joint Commission's capacity to adequately fund required surveys.

++ The Joint Commission's policies to assure that surveys are unannounced.

++ The Joint Commission's agreement to provide CMS with a copy of a facility's most current accreditation survey together with any survey information that CMS may request (including corrective action plans).

IV. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Dated: September 11, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2014–22632 Filed 9–22–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1626–N]

Medicare Program; Solicitation of Nominations to the Advisory Panel on Hospital Outpatient Payment

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice solicits nominations for up to four new members to the Advisory Panel on Hospital Outpatient Payment (HOP, the Panel). There are vacancies on the Panel effective September 30, 2014.

The purpose of the Panel is to advise the Secretary of the Department of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services on the clinical integrity of the Ambulatory Payment Classification (APC) groups and their associated weights, and supervision of hospital outpatient services.

The Secretary rechartered the Panel in 2012 for a 2-year period effective through November 19, 2014. CMS intends to recharter the Panel for another 2-year period prior to expiration of the current charter.

DATES: *Submission of Nominations:* We will consider nominations if they are received no later than 5 p.m. (e.s.t.) November 24, 2014.

ADDRESSES: Please submit nominations electronically to the following email address: *APCPanel@cms.hhs.gov.*

Web site: For additional information on the Panel and updates to the Panel's activities, we refer readers to our Web site at the following address: *http://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonAmbulatoryPaymentClassificationGroups.html.*

FOR FURTHER INFORMATION CONTACT: Persons wishing to nominate individuals to serve on the Panel or to obtain further information may contact Carol Schwartz at the following email address: *APCPanel@cms.hhs.gov* or call (410) 786–3985.

News Media: Representatives should contact the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Department of Health and Human Services (the Secretary) is required by section 1833(t)(9)(A) of the Social Security Act (the Act), and section 222 of the Public Health Service Act (PHS Act) to consult with an expert outside advisory panel regarding the clinical integrity of the Ambulatory Payment Classification (APC) groups and relative payment weights that are components of the Medicare Hospital Outpatient Prospective Payment System (OPPS), and the appropriate supervision level for hospital outpatient services. The Panel is governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory panels. The panel may consider data collected or developed by entities and organizations (other than the Department of Health and Human Services) as part of their deliberations.

The Charter provides that the Panel shall meet up to three times annually. We consider the technical advice provided by the Panel as we prepare the proposed and final rules to update the OPPS for the following calendar year.

The Panel shall consist of a chair and up to 19 members who are full-time employees of hospitals, hospital systems, or other Medicare providers that are subject to the OPPS. (For purposes of the Panel, consultants or independent contractors are not considered to be representatives of providers.)

The current Panel members are as follows: (**Note:** The asterisk [*] indicates the Panel members whose terms end effective September 30, 2014.)

- E. L. Hambrick, M.D., J.D., Chair, a CMS Medical Officer.
- Karen Borman, M.D.
- Kari S. Cornicelli, C.P.A., FHFMA.*
- Brain D. Kavanagh, M.D., M.P.H.*
- Scott Manaker, M.D., Ph.D.*
- John Marshall, CRA, RCC, RT.*
- Jim Nelson
- Leah Osbahr
- Jacqueline Phillips
- Johnathan Pregler, M.D.
- Traci Rabine
- Wendy Resnick, FHFMA
- Michael Rabovsky, M.D.
- Marianna V. Spanki-Varelas M.D., Ph.D., M.B.A.
- Gale Walker
- Kris Zimmer

Panel members serve on a voluntary basis, without compensation, according

to an advance written agreement; however, for the meetings, CMS reimburses travel, meals, lodging, and related expenses in accordance with standard Government travel regulations. CMS has a special interest in ensuring, while taking into account the nominee pool, that the Panel is diverse in all respects of the following: Geography; rural or urban practice; race, ethnicity, sex, and disability; medical or technical specialty; and type of hospital, hospital health system, or other Medicare provider subject to the OPPS.

Based upon either self-nominations or nominations submitted by providers or interested organizations, the Secretary, or her designee, appoints new members to the Panel from among those candidates determined to have the required expertise. New appointments are made in a manner that ensures a balanced membership under the FACA guidelines.

II. Criteria for Nominees

The Panel must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed. Each Panel member must be employed full-time by a hospital, hospital system, or other Medicare provider subject to payment under the OPPS. All members must have technical expertise to enable them to participate fully in the Panel's work. Such expertise encompasses hospital payment systems; hospital medical care delivery systems; provider billing systems; APC groups; Current Procedural Terminology codes; and alpha-numeric Health Care Common Procedure Coding System codes; and the use of, and payment for, drugs, medical devices, and other services in the outpatient setting, as well as other forms of relevant expertise. For supervision deliberations, the Panel shall have members that represent the interests of Critical Access Hospitals (CAHs), who advise CMS only regarding the level of supervision for hospital outpatient services.

It is not necessary for a nominee to possess expertise in all of the areas listed, but each must have a minimum of 5 years experience and currently have full-time employment in his or her area of expertise. Generally, members of the Panel serve overlapping terms up to 4 years, based on the needs of the Panel and contingent upon the rechartering of the Panel. A member may serve after the expiration of his or her term until a successor has been sworn in.

Any interested person or organization may nominate one or more qualified individuals. Self-nominations will also be accepted. Each nomination must include the following:

- Letter of Nomination stating the reasons why the nominee should be considered.
- Curriculum vitae or resume of the nominee that includes an email address where the nominee can be contacted.
- Written and signed statement from the nominee that the nominee is willing to serve on the Panel under the conditions described in this notice and further specified in the Charter.
- The hospital or hospital system name and address, or CAH name and address, as well as all Medicare hospital and or Medicare CAH billing numbers of the facility where the nominee is employed.

III. Copies of the Charter

To obtain a copy of the Panel's Charter, we refer readers to our Web site at the following: *http://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonAmbulatoryPaymentClassificationGroups.html.*

IV. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

Dated: September 15, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2014–22634 Filed 9–22–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Annual Statistical Report on Children in Foster Homes and Children in Families Receiving Payment in Excess of the Poverty Income Level from a State Program Funded Under Part A of Title IV of the Social Security Act.

OMB No.: 0970–0004.

Description

The Department of Health and Human Services is required to collect these data under section 1124 of Title I of the Elementary and Secondary Education Act, as amended by Public Law 103–382. The data are used by the U.S. Department of Education for allocation of funds for programs to aid disadvantaged elementary and secondary students. Respondents include various components of State Human Service agencies.

Respondents

The 52 respondents include the 50 States, the District of Columbia, and Puerto Rico.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Annual Statistical Report on Children in Foster Homes and Children Receiving Payments in Excess of the Poverty Level From a State Program Funded Under Part A of Title IV of the Social Security Act	52	1	264.35	13,746.20

Estimated Total Annual Burden Hours: 13,746.20

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect

if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2014–22598 Filed 9–22–14; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1359]

Development and Regulation of Abuse-Deterrent Formulations of Opioid Medications; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to discuss the development, assessment, and regulation of abuse-deterrent formulations of opioid medications. The meeting will focus on scientific and technical issues related to the development and in vitro assessment of these products, as well as FDA's approach towards assessing the benefits and risks of all opioid medications, including those with abuse-deterrent properties.

FDA is seeking input on these issues from all stakeholders, including patients, health care providers, the pharmaceutical industry, patient advocates, academics, researchers, and other governmental entities.

DATES: The public meeting will be held on October 30, 2014, from 8:30 a.m. to 5 p.m. and October 31, 2014, from 8:30 a.m. to 3 p.m. The public meeting may be extended or may end early depending on the level of public participation. Individuals who wish to present at the meeting must register by October 14, 2014. Individuals who wish to attend the meeting but do not wish to make a presentation should register by October 24, 2014. See section III under the **SUPPLEMENTARY INFORMATION** section for information on how to register to speak at the meeting. Submit either electronic or written comments by January 9, 2015.

ADDRESSES: The public meeting will be held at the Sheraton Silver Spring Hotel, 8777 Georgia Ave., Silver Spring, MD 20910, 301–589–0800, FAX: 301–587–4791.

Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify all comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Mary C. Gross, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20903, 301–796–3519, FAX: 301–796–9899, email: *mary.gross@fda.hhs.gov;* or Brutrinia D. Cain, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–4633, email: *Brutrinia.cain@fda.hhs.gov;* or Georgiann Ienzi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–3515, FAX: 301–847–8737, email: *Georgiann.Ienzi@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Opioid analgesics are important medications that are widely prescribed for the treatment of pain, and certain opioids are also used in drug treatment programs. When used properly, opioid drugs provide significant benefits for patients. However, they also carry a risk of misuse, abuse, addiction, overdose, and death. According to an analysis from the Centers for Disease Control and Prevention (CDC), in 2010, opioid analgesics were involved in 16,651 overdose deaths, which represented a 313 percent increase over the past decade (Ref. 1). The Substance Abuse and Mental Health Services Administration (SAMHSA) reports that for each overdose death, there were an additional 11 treatment admissions (Ref. 2), 33 emergency department visits (Ref. 3), and 880 non-medical users of these drugs (Ref. 4).

The development of and transition to use of opioids with meaningful abuse-deterrent properties is one important component of a multipronged approach to addressing abuse of opioid medications. FDA looks forward to a future in which most or all opioid medications are available in formulations that are less susceptible to abuse than the formulations that are on the market today.

To achieve this goal, FDA is taking steps to incentivize and support the development of opioid medications with progressively better abuse-deterrent properties. These steps include working with individual sponsors on promising abuse-deterrent technologies, developing appropriate testing methodologies for both innovator and generic products, and publishing guidance on the development and labeling of abuse-deterrent opioids.

FDA understands that the iterative innovation in abuse-deterrent technologies we envision could have implications for generic opioid medications. It is important that generic options remain available to ensure widespread access to effective analgesics for patients who need them.

The transition to abuse-deterrent formulations of opioid medications presents a number of complex scientific and regulatory challenges. The purpose of this public meeting is to share and solicit comments on the Agency's ongoing work to identify and address these challenges.

II. Background

Opioid analgesics (e.g., hydrocodone, oxycodone, morphine, and fentanyl) play a vital role in treating both chronic and acute pain. The Institute of Medicine reports that millions of Americans are living with chronic pain, including those suffering from back pain, neuropathic pain, and pain associated with cancer, with an annual economic cost of approximately $600 billion in health care expenses and lost productivity (Ref. 5). Millions more suffer from acute pain following common medical procedures performed every day across the country, such as dental and orthopedic procedures. While FDA is working to support the efficient development of safer, non-opioid alternatives for treating pain, opioids are currently an indispensable component of the pain treatment armamentarium, and will remain so for some time to come.

Unfortunately, the abuse and misuse of opioid medications has become a public health crisis. Opioid-involved drug overdose death rates in the United States have increased four-fold from 1999 to 2008 (Ref. 6). Emergency department visits, substance abuse treatment admissions, and economic costs associated with opioid abuse have also increased dramatically over the same period (Ref. 7). This rise in adverse events has largely paralleled the

rise in the number of prescriptions for these products (Ref. 7). A comprehensive approach is needed to address this crisis—one that involves other Federal agencies, State governments, professional medical organizations, academic institutions, and other stakeholders. FDA, as one part of the Federal response to this crisis, is working to improve the safe use of opioids.

As part of this work, FDA strongly supports the development of opioid medications with meaningful abuse-deterrent properties. Although this field holds great promise, it is relatively new. Currently available abuse-deterrent formulations are expected to provide improvements over existing formulations, but their impact on the abuse epidemic may be limited. For example, even though some abuse-deterrent technologies have been demonstrated to deter some forms of abuse (e.g., injection or intranasal) to varying degrees in controlled settings, as yet no marketed opioid formulation has been demonstrated to deter the simplest and most common form of abuse—swallowing a number of intact tablets or capsules. Further, all currently available formulations designed to deter abuse can be defeated with sufficient time, equipment, and expertise. These limitations may be impossible to completely overcome as these products must release the opioids they contain to have their intended therapeutic effects.

FDA believes abuse-deterrent technologies can and will improve substantially and can make a real impact in the fight against prescription opioid abuse. FDA hopes that as the market for opioid medications transitions to abuse-deterrent formulations, abuse rates will decrease and the most significant consequences of that abuse (addiction, overdose, and death) will diminish. To that end, fostering the development, marketing, and iterative improvement of abuse-deterrent formulations of opioid medications is a top priority. FDA's work in support of this priority includes the following:

- Established an Opioids Taskforce to coordinate and support FDA work on abuse-deterrent formulations of opioids.
- Consulted with advisory committees in connection with the development, evaluation, and labeling of opioids with abuse-deterrent technologies. For example, in October 2010, a joint meeting of the Anesthetic and Life Support Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee was held to discuss, among other things, how sponsors should design and conduct postmarket epidemiological or observational studies to evaluate whether and to what extent products designed to reduce the likelihood and incidence of abuse actually do so.
- Issued draft guidance to assist industry in developing and assessing abuse-deterrent opioid formulations (''Draft Guidance for Industry: Abuse-Deterrent Opioids—Evaluation and Labeling,'' 78 FR 2676; January 14, 2013). FDA participated in the Abuse-Deterrence Formulation Science meeting held on September 30 and October 1, 2013, which provided a forum to discuss the draft guidance. FDA is committed to publishing a final version of this guidance as soon as possible.
- Met and worked with sponsors regarding approval of potentially abuse-deterrent formulations and reviewed applications seeking approval, or, subsequent to such approval, seeking inclusion of language in product labeling regarding the products' purportedly abuse-deterrent properties.
- Determined that the original formulation of OXYCONTIN posed an increased potential for abuse by certain routes of administration compared to reformulated OXYCONTIN. Based on the totality of the data and information available, FDA concluded that the benefits of original OXYCONTIN no longer outweighed its risks. The Agency determined that original OXYCONTIN was withdrawn for reasons of safety and effectiveness, and accordingly will not accept abbreviated new drug applications (ANDAs) that refer to original OXYCONTIN.
- Conducted or supported research on opioid formulations designed to deter abuse. This includes development of in vitro testing methodologies to assess purportedly abuse-deterrent opioid formulations.
- Sought public comment on innovative packaging, storage, and disposal systems that could help deter prescription opioid abuse (see *http://www.gpo.gov/fdsys/pkg/FR-2014-04-09/pdf/2014-07909.pdf*).

III. Scope of the Public Meeting

FDA is opening a docket and holding a public meeting to obtain public input on issues related to abuse-deterrent formulations of opioid medications. The first session of the meeting will focus on scientific and technical issues related to the development and in vitro assessment of these products. The second session will focus on FDA's approach to assessing the benefits and risks of the opioids, including opioids with abuse-deterrent properties. The second session will cover both FDA's relevant actions to date as well as how FDA can continue to and further support advances in this field.

A. Session 1: Development and Evaluation of Abuse-Deterrent Opioid Formulations

In this session FDA personnel and others will give presentations on the manufacturing and formulation science related to abuse-deterrent formulations, including methods used to evaluate the in vitro performance of such formulations. FDA's goal is to develop scientifically rigorous methods for assessing how well purportedly abuse-deterrent opioid formulations—whether submitted in connection with a new drug application (NDA) or an ANDA—actually deter abuse. As discussed in the ''Draft Guidance for Industry: Abuse-Deterrent Opioids—Evaluation and Labeling,'' for NDA products evidence from in vitro studies, bioavailability studies, human abuse liability studies, and/or epidemiological studies may be needed to fully evaluate a product's potentially abuse-deterrent properties. In this session, however, we are focusing only on the first category of testing—in vitro studies.

FDA will discuss its internal research in this area. This discussion will include the manufacturing science behind the design of abuse-deterrent formulations, a variety of manipulation techniques, and the results of testing approved products and placebo formulations under a range of different manipulation conditions. FDA will also discuss results from its research contract with the National Institute for Pharmaceutical Technology and Education on identifying excipient material attributes that impact abuse-deterrent properties. As we will discuss, these results show that while currently available technologies have promise with regard to reducing abuse, additional work is needed, as they also have significant limitations and vulnerabilities.

FDA is developing standardized in vitro test methodologies to assess how well purportedly abuse-deterrent formulations perform under conditions designed to simulate the ways individuals who abuse opioids manipulate opioid products for purposes of abuse (e.g., crushing, heating, dissolving).

For both NDAs and ANDAs, these methodologies could be used to identify the critical performance attributes of the drug potentially related to abuse-deterrence (e.g., crush-resistance, extraction-resistance). For NDAs, these methodologies could be used to assess comparative performance with predecessor products or appropriate controls (e.g., a non-abuse-deterrent immediate-release (IR) formulation with the same active ingredient). For ANDAs, FDA is still considering the best approach, but these methodologies could be used to assess the proposed generic product's critical performance attributes related to abuse deterrence relative to those of the reference listed drug (RLD).≤

For both NDAs and ANDAs, FDA intends to issue general guidance defining common protocols for in vitro testing. FDA is considering whether to provide more detailed, product-specific in vitro testing recommendations for ANDAs as well, possibly by including such guidance together with product-specific bioequivalence testing recommendations where appropriate.

Topics for Discussion:

- Please comment on the limitations of currently available abuse-deterrent technologies and what next-generation technologies or products might be able to overcome these limitations and provide improved protection against abuse and misuse. Please comment both on the development of iterative improvements in abuse-deterrent technologies for solid oral dose forms of opioids and on the development of abuse-deterrent formulation technologies for non-solid oral dosage forms (e.g., transdermal patches, solutions, and buccal films).
- Please comment on the approach discussed above whereby FDA would focus on a given RLD's critical performance attributes related to abuse deterrence for purposes of evaluating an ANDA referencing that formulation. How would these critical performance attributes be identified for a given product? What if certain attributes are not described in the RLD's approved labeling?
- Please comment on the approach discussed above whereby FDA develops and publishes a standard battery of in vitro test manipulations to be conducted on all, or some appropriate subset of, potentially abuse-deterrent formulations.
  - ○ Specifically, please comment on the utility of step-wise testing, moving from simple manipulations to more complex ones. If the abuse-deterrent features are compromised or defeated by simple manipulations, would further testing that is more complex (e.g., involving more than one manipulation) and more destructive (e.g., higher temperatures, harsher solvents, etc.) be valuable?
  - ○ Please also comment on the availability and use of common solvents in which extraction studies should be conducted.
  - ○ Please comment on the appropriate controls for in vitro assessments of proposed generic abuse-deterrent formulations. Should the proposed generic abuse-deterrent formulation only be compared with the RLD formulation with abuse-deterrent properties or is the use of an additional negative control necessary to ensure that the test is sufficiently discriminatory? Please comment on the selection and standardization of a negative control, and what degree of superiority compared with the negative control should be viewed as meaningful.
  - ○ Please comment on what performance attributes should be considered ''critical'' in assessing whether and to what extent a formulation effectively deters abuse, such as the time delay or the amount of effort needed by the abuser under controlled conditions to access the drug for purposes of abuse. How can these performance attributes be quantified and linked to their impact on abuse deterrence? For example, an abuse-deterrent technology may only delay—rather than completely prevent—access to the opioid for purposes of abuse. Please comment on the amount of time delay that should be considered significant and the basis for your recommendation.
  - ○ Please comment on how FDA should adapt and expand its testing methodologies as new abuse-deterrent technologies become available. Are there any specific emerging technologies that might require new types of testing?

B. Session 2: FDA's Regulation of Abuse-Deterrent Opioid Formulations

FDA assesses each opioid drug product's safety and efficacy on a case-by-case basis. Abuse potential is one aspect of a product's safety that the Agency considers, together with all other appropriate factors, in determining whether a product's benefits outweigh its risks. As part of this determination, FDA considers the benefit/risk profile of available therapies.

For instance, FDA determined that original OXYCONTIN, which lacked abuse-deterrent properties, posed an increased potential for abuse by certain routes of administration compared to reformulated OXYCONTIN. After reformulated OXYCONTIN was approved, FDA concluded that the benefits of original OXYCONTIN no longer outweighed its risks. The Agency determined that original OXYCONTIN was withdrawn for reasons of safety and effectiveness, and accordingly will not accept ANDAs that refer to original OXYCONTIN.

Regarding the labeling of opioid products with potentially abuse-deterrent properties, FDA's current thinking is described in the ''Draft Guidance for Industry: Abuse-Deterrent Opioids—Evaluation and Labeling.'' Studies designed to evaluate a product's purportedly abuse-deterrent properties should be scientifically rigorous. In order to support a description of such properties in labeling, the data should predict or show that these properties can be expected to, or actually do, result in a meaningful reduction in that product's abuse potential (Ref. 8). To date, only two products—TARGINIQ and reformulated OXYCONTIN—have obtained labeling for their abuse-deterrent properties consistent with this thinking.

Regarding generic versions of opioids designed to deter abuse, FDA is still carefully considering its approach and much remains to be worked out. See Session 1 above for a discussion of how comparative in vitro testing may be used to assess these products.

As abuse-deterrent technologies continue to improve and new opioid products are developed and approved that meaningfully reduce abuse, FDA expects the market for opioid medications to continue to transition to abuse-deterrent formulations. Ultimately, FDA looks forward to a future in which all or substantially all opioid medications are less susceptible to abuse than the conventional formulations that dominate the market today.

Although FDA has received requests to require all opioid medications, or some subset of them, to be formulated with abuse-deterrent technologies, we have said that a class-wide requirement is not feasible or in the interests of public health at this time (Ref. 9). This field is still in its early stages. Both the technologies involved and the clinical, epidemiological, and statistical methods for evaluating those technologies are new and rapidly evolving. As discussed above, we have limited experience with these formulations and currently available abuse-deterrent technologies have significant limitations.

Accordingly, FDA currently applies the product-by-product approach described in Session 2, with a goal of incentivizing an incremental, sponsor-

driven market transition from conventional opioid formulations to formulations with meaningful abuse-deterrent properties. We anticipate, however, that at some point—after abuse-deterrent formulations have become available for a number of different opioid active moieties and after we have obtained more experience with this field—FDA may determine that the risks of all or most opioid products that lack abuse-deterrent properties outweigh the benefits in light of available therapies. We pose several questions about these approaches below.

Finally, given that currently marketed abuse-deterrent technologies have significant limitations, FDA is interested in appropriately incentivizing and supporting meaningful improvements in abuse-deterrent technologies so that progressively better abuse-deterrent formulations become available. We pose questions about this below as well.

Topics for Discussion:

- As described in the ''Draft Guidance for Industry: Abuse-Deterrent Opioids—Evaluation and Labeling,'' FDA intends to approve language in NDA product labeling that accurately and fairly describes the abuse-deterrent properties of an opioid product if adequately supported by data (Ref. 8). We hope that the availability of such labeling claims will incentivize development and use of those products preferentially where appropriate. Please comment on this approach, including its impact on encouraging the development of generic opioids with abuse-deterrent formulations.
- What does it mean for a product to have meaningful abuse-deterrent properties? Please comment on what data should be provided to support that determination.
- FDA is considering under what circumstances the benefit/risk assessment methodology discussed in Session 2 would support a refusal to approve, or withdrawal of approval for, an NDA for an opioid formulation lacking meaningful abuse-deterrent properties if an available therapy or therapies with meaningful abuse-deterrent properties exist. Please comment on this approach and its implications for the development of abuse-deterrent opioid formulations, patient access to opioid medications, generic competition, and potential drug shortages. What other considerations should pertain?
- One aspect of the benefit/risk assessment relates to the consideration of available therapies. Please comment on FDA's consideration of available therapies in assessing (or re-assessing) the benefit/risk profile of an opioid drug product. What product or products should FDA consider to be ''available therapies'' when assessing or re-assessing the benefit/risk profile of an opioid product?
- Much of the focus in developing abuse-deterrent formulations has been on extended-release and long-acting (ER/LA) opioids. As more ER/LA opioid products are reformulated with abuse-deterrent technologies, individuals who abuse opioids may shift their attention to opioid drugs lacking abuse-deterrent properties, including IR products. Are there special considerations associated with IR products that do not apply to ER/LA opioids? Also, please comment on whether there are subclasses of opioid medications for which a shift to abuse-deterrent formulations may be of limited public health benefit.
- As discussed above, FDA does not think a class-based, abuse-deterrent formulation requirement is feasible or appropriate at this time. Under what circumstances would it be appropriate to impose such a requirement and on what classes or subclasses of opioid products? What considerations should be taken into account to help ensure that such an approach does not conflict with public health needs for continued access to important medications?
- If FDA were to determine that the risks of an opioid product—or, in the case of a class-based approach, many such products—that lacks abuse-deterrent properties outweigh the benefits in light of available therapies, how could the Agency minimize any negative impact on patient access and on generic and innovator drug development? One possible option would be to apply a delayed implementation date (e.g., 2 years) to give affected sponsors a ''phase-out'' period to either reformulate or withdraw products lacking abuse-deterrent properties. Please comment.
- As noted above, FDA is interested in encouraging the development and introduction of opioid products with progressively better abuse-deterrent properties, as well as the phase-out of products with less meaningful properties, as abuse-deterrent technologies improve. What actions could FDA take to support this goal? Under what circumstances would it be appropriate to refuse to approve or initiate withdrawal of a product with, for example, ''first generation'' abuse-deterrent properties?
- Finally, FDA is aware of the importance of identifying ways to measure the impacts (positive or negative) of the actions we take to incentivize and support the development and introduction of abuse-deterrent formulations of opioid medications. Are there specific potential impacts of our actions that we need to consider in addition to those addressed above?

III. Attendance and Registration

Attendance is free and will be on a first-come, first served basis. Individuals who wish to present at the public meeting must register on or before October 14, 2014, at *https://fda-abuse-deterrent-public-meeting.eventbrite.com.* FDA will accommodate requests to speak, as time permits, and will determine the amount of time allotted to each presenter based on the numbers of speaker requests. Speakers should plan on arriving to the meeting prior to the assigned time in order to avoid forfeiting your assigned time should the agenda move ahead of schedule. An agenda and additional meeting background material will be available approximately 3 days before the meeting at *http://www.fda.gov/Drugs/NewsEvents/ucm408607.htm.*

Individuals who wish to attend the meeting but do not wish to make a presentation should also register at *https://fda-abuse-deterrent-public-meeting.eventbrite.com* by October 24, 2014. Onsite registration on the day of the meeting will be based on space availability.

If you need special accommodations due to a disability, please contact Mary Gross, Brutrinia Cain, or Georgiann Ienzi (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance.

Information about how to view the live Web cast of this meeting will posted at *http://www.fda.gov/Drugs/News Events/ucm408607.htm.* A video recording of the meeting will be available at the same Web address for 1 year.

IV. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. To ensure consideration, submit comments by January 9, 2015. 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.*

V. Transcripts

As soon as possible after a transcript of the public meeting is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (see **ADDRESSES**). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

VI. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register.**)

1. CDC, ''Opioids Drive Continued Increase in Drug Overdose Deaths'', 2013, available at *http://www.cdc.gov/media/releases/2013/p0220_drug_overdose_deaths.html.*

2. SAMHSA, Center for Behavioral Health Statistics and Quality. Treatment Episode Data Set (TEDS): 2001–2011. National Admissions to Substance Abuse Treatment Services. BHSIS Series S–65, HHS Publication No. (SMA) 13–4772. Rockville, MD, 2013, available at *http://www.samhsa.gov/data/2k13/TEDS2011/TEDS2011N.pdf.*

3. SAMHSA, Center for Behavioral Health Statistics and Quality, ''Drug Abuse Warning Network,'' 2011, available at *http://samhsa.gov/data/dawn/nations/Nation_2011_AllMA.xls.*

4. SAMHSA, ''Results from the 2012 National Survey on Drug Use and Health,'' detailed table 1.1A, NSDUH Series H–46, HHS Publication No. (SMA) 13–4795. Rockville, MD, 2013, available at *http://www.samhsa.gov/data/NSDUH/2012SummNatFindDetTables/NationalFindings/NSDUHresults2012.pdf.*

5. Institute of Medicine, ''Relieving Pain in America: A Blueprint for Transforming Prevention, Care, Education, and Research,'' available at *http://www.iom.edu/Reports/2011/Relieving-Pain-in-America-A-Blueprint-for-Transforming-Prevention-Care-Education-Research.aspx.*

6. CDC, ''Vital Signs: Overdoses of Prescription Opioid Pain Relievers—United States, 1999–2008,'' available at *http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6043a4.htm.*

7. Department of Health and Human Services, ''Addressing Prescription Drug Abuse in the United States—Current Activities and Future Opportunities,'' available at *http://www.cdc.gov/HomeandRecreationalSafety/pdf/HHS_Prescription_Drug_Abuse_Report_09.2013.pdf.*

8. ''Draft Guidance for Industry: Abuse-Deterrent Opioids—Evaluation and Labeling,'' January 2013, available at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM334743.pdf.*

9. Janet Woodcock, M.D., letter to Center for Lawful Access and Abuse Deterrence et al., dated October 25, 2013, in Docket No. FDA–2013–P–0703, available at *http://www.regulations.gov/#!documentDetail;D=FDA-2013-P-0703-0004.*

Dated: *September 17, 2014.*

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–22514 Filed 9–22–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1286]

Collaborative Approaches for Medical Device and Healthcare Cybersecurity; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

The Food and Drug Administration (FDA) is announcing the following public workshop entitled ''Collaborative Approaches for Medical Device and Healthcare Cybersecurity''. FDA, in collaboration with other stakeholders within the Department of Health and Human Services (HHS) and the Department of Homeland Security (DHS), seeks broad input from the Healthcare and Public Health (HPH) Sector on medical device and healthcare cybersecurity. The vision for this public workshop is to catalyze collaboration among all HPH stakeholders. Participants will identify barriers to promoting cooperation; discuss innovative strategies to address challenges that may jeopardize critical infrastructure; and enable proactive development of analytical tools, processes, and best practices by the stakeholder community in order to strengthen medical device cybersecurity.

Dates and Times: The public workshop will be held on October 21 and 22, 2014, from 9 a.m. to 5 p.m.

Location: The public workshop will be held at the National Intellectual Property Rights Coordination Center Auditorium, 2451 Crystal Dr., suite 200, Arlington, VA 22202. Entrance for the public workshop participants is through the main doors which face Crystal Drive. Upon arrival at the facility, participants should visit the registration table to check in. For parking, participants may choose from a number of pay garages, including one directly beneath the facility.

Contact Person: Suzanne Schwartz, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5418, Silver Spring, MD 20993, 301–796–6937, FAX: 301–847–8510, email: *Suzanne.Schwartz@fda.hhs.gov.*

Registration: Registration is free and available on a first-come, first-served basis. Persons interested in attending this public workshop must register online by 4 p.m., October 14, 2014. Early registration is recommended because facilities are limited and, therefore, FDA may limit the number of participants from each organization. If time and space permit, onsite registration on the day of the public workshop will be provided beginning at 8:30 a.m.

If you need special accommodations due to a disability, please contact Susan Monahan, 301–796–5661, email: *Susan.Monahan@fda.hhs.gov,* no later than October 15, 2014.

To register for the public workshop, please visit FDA's Medical Devices News & Events—Workshops & Conferences calendar at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list.) Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone number. Those without Internet access should contact Suzanne Schwartz to register (see *Contact Person*). Registrants will receive confirmation after they have been accepted. You will be notified if you are on a waiting list.

Streaming Webcast of the Public Workshop: This public workshop will also be Webcast. Persons interested in viewing the Webcast must register online by 4 p.m., October 14, 2014. Early registration is recommended because Webcast connections are limited. Organizations are requested to register all participants, but to view using one connection per location. Webcast participants will be sent technical system requirements after registration and will be sent connection access information after October 16, 2014. Most updated browsers will support the Webcast.

Comments: FDA is holding this public workshop to obtain information on medical device cybersecurity. In order to permit the widest possible opportunity to obtain public comment,

FDA is soliciting either electronic or written comments on all aspects of the public workshop topics, regardless of attendance at the public workshop. The deadline for submitting comments related to this public workshop is November 24, 2014.

Regardless of attendance at the public workshop, interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. 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. In addition, when responding to specific questions as outlined in section III of this document, please identify the question number you are addressing. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. A link to the transcripts will also be available approximately 45 days after the public workshop on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list).

SUPPLEMENTARY INFORMATION:

I. Background

In February 2013, the President issued Executive Order 13636, ''Improving Critical Infrastructure Cybersecurity,'' recognizing that resilient infrastructure is essential to preserving national security, economic stability, and public health and safety in the United States (Ref. 1). Executive Order 13636 states that cyber threats to national security are among the most serious, so stakeholders must enhance the cybersecurity and resilience of critical infrastructure. This includes the HPH Sector. Furthermore, Presidential Policy Directive (P.P.D.) 21 tasks Federal Government entities to strengthen the security and resilience of critical infrastructure against physical and cyber threats such that these efforts reduce vulnerabilities, minimize consequences, and identify and disrupt threats (Ref. 2). Moreover, P.P.D. 21 encourages all public and private owners and operators to share responsibility in achieving these outcomes. By convening this public meeting, FDA and its workshop partners strive to engage all stakeholders in HPH. These stakeholders include, but are not limited to: medical device manufacturers; healthcare facilities and personnel (e.g., healthcare providers, biomedical engineers, IT system administrators); professional and trade organizations (including medical device cybersecurity consortia); patient groups; insurance providers; cybersecurity researchers; local, State, and Federal Governments; and information security firms.

Executive Order 13636 and P.P.D. 21 together serve as a call to action for promoting the cybersecurity of the Nation's critical infrastructure. The National Institute of Standards and Technology (NIST) developed the ''Framework for Improving Critical Infrastructure Cybersecurity'' (''Framework'') with collective input from government agencies and the private sector to address Executive Order 13636's call for a voluntary, risk-based approach, harnessing a set of industry standards and best practices to manage cybersecurity risks (Ref. 3). P.P.D. 21 identifies critical sectors within the United States and charges each with adapting and implementing the Framework. HHS, as lead for the HPH Sector, seeks to adapt the Framework across its workspace. Developing a common lexicon is critical to this public-private collaboration to address and manage medical device cybersecurity risks. This workshop is an integral step towards the HPH Sector's collective understanding of the Framework and how it might be adapted to address the unique medical device cybersecurity needs and challenges within the sector.

If exploited, cyber vulnerabilities may result in medical device malfunction, disruption of healthcare services including treatment interventions, inappropriate access to patient information, or compromised electronic health record data integrity. Such outcomes could have a profound impact on patient care and safety. As devices become more connected and interoperable, the threat potential increases. Now, rather than impacting a single device or single system, multiple devices or an entire hospital network may be compromised. Addressing medical device cybersecurity requires recognizing interoperability and interconnectivity. Therefore, enhancing security and resilience entails designing healthcare systems for seamless integration. Such integration will foster innovative and interoperable medical devices that protect and improve patient health and safety.

Advancing medical device cybersecurity measures within the HPH Sector relies upon a 'whole of community' approach that will require acceptance of a 'shared ownership and shared responsibility' model. The objectives of such a model are twofold: (1) To seek solutions that incentivize businesses to adopt best practices and industry standards to be included in product design and systems architecture, and (2) to foster stakeholder collaboration such that emerging threat and vulnerability information is readily shared. This effort requires breaking down barriers and building trust between stakeholders. Ultimately, this effort will facilitate a forum to implement HPH cyber vulnerability and threat management.

II. Topics for Discussion at the Public Workshop

The public workshop sessions will incorporate the following general themes:

- Envisioning a collaborative environment for information sharing and developing a shared risk-assessment framework using a common lexicon;
- Overcoming barriers (perceived and real) to create a community of 'shared ownership and shared responsibility' within the HPH Sector to increase medical device cybersecurity;
- Gaining situational awareness of the current cyber threats to the HPH Sector, especially to medical devices;
- Identifying cybersecurity gaps and challenges, especially end-of-life support for legacy devices and interconnectivity of medical devices;
- Adapting and implementing the Framework to support management of cybersecurity risks involving medical devices;
- Developing tools and standards to build a comprehensive cybersecurity program to meet the unique needs of the sector's critical infrastructure, including medical devices;
- Leveraging the technical subject matter expertise of the cybersecurity researcher community working with HPH stakeholders to identify, assess, and mitigate vulnerabilities; and
- Building potential solutions: Exploring collaborative models to gather diverse experts and establish medical

device security benchmarks which are continuously validated.

III. Questions for Consideration

FDA also requests HPH Sector stakeholders to provide perspective on the following:

1. Are stakeholders aware of the ''Framework for Improving Critical Infrastructure Cybersecurity''? If so, how might we adapt/translate the Framework to meet the medical device cybersecurity needs of the HPH Sector?

2. How can we establish partnerships within the HPH Sector to quickly identify, analyze, communicate, and mitigate cyber threats and medical device security vulnerabilities?

3. How might the stakeholder community create incentives to encourage sharing information about medical device cyber threats and vulnerabilities?

4. What lessons learned, case studies, and best practices (from within and external to the sector) might incentivize innovation in medical device cybersecurity for the HPH Sector? What are the cybersecurity gaps from each stakeholder's perspective: Knowledge, leadership, process, technology, risk management, or others? and,

5. How do HPH stakeholders strike the balance between the need to share health information and the need to restrict access to it?

The deadline for submitting answers to these questions for consideration and any other additional comments on the proposed workshop topics is October 7, 2014.

IV. References

1. Executive Order 13636, ''Improving Critical Infrastructure Cybersecurity,'' Feb. 19, 2013, available at *http://www.gpo.gov/fdsys/pkg/FR-2013-02-19/pdf/2013-03915.pdf.*
2. Presidential Policy Directive 21, ''Critical Infrastructure Security and Resilience,'' Feb. 12, 2013, available at *http://www.whitehouse.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil.*
3. National Institute of Standards and Technology (NIST), ''Framework for Improving Critical Infrastructure Cybersecurity,'' version 1, Feb. 12, 2014, available at *http://www.nist.gov/cyberframework/upload/cybersecurity-framework-021214-final.pdf.*

Dated: September 17, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–22515 Filed 9–22–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0502]

Report on the Standardization of Risk Evaluation and Mitigation Strategies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft report entitled ''Standardizing and Evaluating Risk Evaluation and Mitigation Strategies (REMS)''. This report describes the Agency's findings concerning strategies to standardize risk evaluation and mitigation strategies (REMS), where appropriate, with the goal of reducing the burden of implementing REMS on practitioners, patients, and others in various health care settings. As part of the reauthorization of the Prescription Drug User Fee Act (PDUFA), FDA has committed to standardizing REMS to better integrate them into the existing and evolving health care system. FDA is publishing this report to allow the public to provide comment on the report as it relates to PDUFA.

DATES: Submit either electronic or written comments by November 24, 2014.

ADDRESSES: Submit written requests for single copies of the draft report 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. 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 report.

Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Richard Currey, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6125, Silver Spring, MD 20993–0002, 301–796–3918, FAX: 301–595–7910, email: *REMS_Standardization@fda.hhs.gov;* or Adam Kroetsch, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1192, Silver Spring, MD 20993–0002; 301–796–3842, FAX: 301–847–8443, email: *REMS_Standardization@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft report entitled ''Standardizing and Evaluating Risk Evaluation and Mitigation Strategies (REMS).'' This report describes the Agency's findings concerning strategies to standardize REMS, where appropriate, with the goal of reducing the burden on practitioners, patients, and others in various health care settings. The Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85), enacted on September 27, 2007, established FDA's authority to require REMS for prescription drug and biological products when it determines that such a strategy is necessary to ensure that the benefits of a drug outweigh the risks. Since that time, REMS have become a key tool in augmenting FDA's drug safety capacities. The Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112–144), enacted on July 9, 2012, amended FDA's REMS authorities and strengthened the Agency's ability to safeguard and advance public health. Among other things, FDASIA reauthorized the Prescription Drug User Fee Act (known as ''PDUFA V,'' reflecting the fifth reauthorization of PDUFA). As part of its PDUFA V commitments, FDA agreed, among other things, to ''measure the effectiveness of REMS and standardize and better integrate REMS into the health care system.'' To this end, ''FDA will . . . continue to develop techniques to standardize REMS and with stakeholder input seek to integrate them into the existing and evolving (e.g., increasingly electronic) health care system.'' FDA also agreed to hold one or more public meetings to explore strategies to standardize REMS, where appropriate, with the goal of reducing the burden of implementing REMS on practitioners, patients, and others in various health care settings, and to issue a report of the Agency's findings identifying at least one priority project with a work plan for project completion in the areas of pharmacy systems, prescriber education, providing benefit-risk information to patients, and practice settings.

FDA held a 2-day public meeting on REMS Standardization and Assessment on July 25–26, 2013, on approaches to standardizing REMS and better

integrating them into the health care delivery system. A transcript of the public meeting and a background document, as well as FDA presentations made at the meeting, are available on FDA's Web site at *http://www.fda.gov/forindustry/userfees/prescriptiondruguserfee/ucm351029.htm.*

This report summarizes stakeholder engagement achieved in fiscal year (FY) 2013, including suggestions and recommendations received from meetings, an expert panel workshop, and comments received electronically (posted to a Federal docket) and via teleconferences. Stakeholder feedback guided the Agency in selecting four priority projects within the areas specified by PDUFA V: (1) Providing benefit/risk information to patients, (2) prescriber education, (3) pharmacy systems, and (4) practice settings. This report briefly reviews the background and context for REMS as well as FDA initiatives for REMS administration and program improvement, summarizes key feedback from stakeholders and experts, and presents the design and the proposed workplans of projects in the four designated priority areas.

II. Draft Report Describing Findings Concerning REMS Standardization and Plans for Projects To Standardize REMS

A. Stakeholder Recommendations

Stakeholder input and recommendations received by FDA in 2013 emphasize the need for better communication by FDA about REMS, improved leveraging of information technology, and flexibility to tailor REMS programs to specific health care settings. The four priority projects that are discussed in detail at the end of the report flow, in part, from these recommendations, and represent the Agency's next steps toward an improved and integrated REMS strategy.

FDA found that stakeholders in various settings have successfully implemented REMS requirements, in some cases developing systems to manage REMS requirements specific to their institutions and integrate the REMS into their practices. However, FDA also heard that REMS programs affect specific stakeholder responsibilities and organizational structures differently, presenting a central challenge to standardizing REMS while meeting the needs of multiple stakeholders across an array of health care environments. Stakeholders indicated that they want flexibility to implement a REMS program based upon the nature of the health care setting.

Stakeholders emphasized that communication by FDA about REMS should be improved. They stated that FDA communications about REMS are often inadequate, inconsistent, unclear, or too difficult to access, navigate, and digest.

Stakeholders recommended that FDA create more comprehensive, evidence-based, and organized communications that can function within existing health care systems; deliver clear, actionable information to clinicians; and help to ensure that patients receive the drugs they require with excellent safety monitoring and oversight. They frequently suggested that FDA invest in and improve leveraging of existing information technology systems to better integrate REMS into standard medical practice and ongoing health care delivery.

Several stakeholders noted that current REMS documentation is not standardized and generally cannot be easily searched, queried, or managed. They recommended Structured Product Labeling (SPL) as a possible designated standard that may allow for a centralized, standardized REMS information repository.

Several stakeholders expressed interest in human factors evaluation methods like Failure Modes and Effect Analysis (FMEA) or a ''Health Care FMEA'' that might be deployed to help to develop criteria for levels of risk (e.g., illness, injury, death) that could prompt regulatory action.

Stakeholders suggested that REMS assessments might benefit from leveraging of data sources (e.g., electronic health records, claims data) to conduct assessments. A related recommendation was that FDA assess programs earlier and more frequently throughout a product's life cycle, and apply information gleaned from assessments to modify REMS if needed.

B. Priority Projects

Guided by stakeholder feedback and recommendations, FDA has identified four priority projects, one for each topic area described previously. Each project responds to input the Agency has received regarding significant areas of opportunity for REMS standardization and evaluation efforts.

- Project 1: Providing Benefit-Risk Information to Patients

This project aims to improve the tools used for prescriber-to-patient counseling about REMS drugs. To that end, FDA proposes to conduct research into existing REMS patient counseling tools, other patient counseling initiatives, and counseling literature to identify current tactics and strategies for patient counseling about medication benefits and risk. The Agency intends to seek feedback from a range of stakeholders to identify opportunities to improve the content, format, processes, techniques, and delivery of effective counseling within REMS programs. In addition, FDA intends to develop a public report of findings and counseling processes and tools that could serve as the basis for designing new tools and validating them in demonstration projects.

- Project 2: Prescriber Education

Numerous stakeholders asked FDA to facilitate the provision of health care provider continuing education (CE) for the education and training that is provided in a REMS program. This project will assess whether it is feasible to provide CE certified by the Accreditation Council of Continuing Medical Education, Accreditation Commission for Education in Nursing, and Accreditation Council for Pharmacy Education associated with a specific REMS. FDA will seek to determine at what stage in the drug approval process CE development would best fit (e.g., before or after product approval) and which CE model(s) would be best suited for this type of activity; and provide an analysis of the time and resource burden associated with developing such CE programs.

- Project 3: Pharmacy Systems

FDA proposes to identify an approach for incorporating REMS information into SPL. The project's purpose is to develop a method to share clear and consistent information about the content of REMS, including REMS documents, requirements, and materials. Doing so will, among other things, facilitate integrating REMS into pharmacy systems and health information technology, including systems for electronic prescribing. SPL will also enable FDA to make structured REMS information available to health care providers and patients, and provide a single conduit of comprehensive information about REMS programs.

- Project 4: Practice Settings

The purpose of this project is to provide a centralized, standardized, reliable, and user-friendly repository of information about REMS, including stakeholders' specific activities and requirements under each REMS program. FDA intends to develop its REMS Web page as a central source of REMS information, which will provide stakeholders in a range of practice settings with a reliable and accessible resource to help them quickly learn

about REMS programs, understand and comply with REMS requirements, and compare requirements across REMS to minimize confusion associated with complying with multiple REMS programs.

C. Scope of the Report

This report describes the Agency's findings concerning strategies to standardize REMS where appropriate, with the goal of reducing the burden of implementing REMS on practitioners, patients, and others in various health care settings. This report contains project plans to: (1) Increase access to REMS-related information through the use of SPL, (2) enhance the Agency's REMS Web page to better meet the needs of stakeholders, (3) assess the feasibility of using accredited CE courses for prescriber training, and (4) enhance existing tools for prescribers to communicate with patients regarding risks of drugs with REMS, and how those risks should be weighed against the potential benefits of the drug.

III. Electronic Access

Persons with access to the Internet may obtain the document on FDA's Web site at *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm350852.htm* or *http://www.regulations.gov.*

IV. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.* After consideration of comments, FDA will finalize the report and project plans. The Agency intends to post updates to the project plans on FDA's Web site.

Dated: September 17, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–22513 Filed 9–22–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request: State and Community Tobacco Control Research Initiative Evaluation (NCI)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on June 6, 2014 (79 FR 32742) and allowed 60 days for public comment. One public comment was received. The purpose of this notice is to allow an additional 30 days for public comment. The National Cancer Institute (NCI), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments or request more information on the proposed project contact: Elizabeth M. Ginexi, Ph.D., Tobacco Control Research Branch, Behavioral Research Program, Division of Cancer Control and Population Sciences, National Cancer Institute, 9609 Medical Center Drive, Room 3E564 MSC 9761, Bethesda, Maryland 20892–9761 or call non-toll-free number 240–276–6765 or email your request, including your address to: *LGinexi@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: State and Community Tobacco Control Research Initiative Evaluation (SCTC), 0925–NEW, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The National Cancer Institute State and Community Tobacco Control Research Initiative is a program within the Tobacco Control Research Branch in the Behavioral Research Program of the Division of Cancer Control and Population Sciences. The program targets 4 high-priority tobacco control research areas at the state and community level in the United States: (1) Secondhand smoke policies, (2) Tobacco tax and pricing policies, (3) Mass media countermeasures and community and social norms, and (4) Tobacco industry practices. The initiative supports innovative research to yield rapid and actionable findings for state and community tobacco control programs. The purpose of the evaluation is to assess the dissemination, implementation, and community collaboration processes of the grantees and their respective state and community partners and stakeholders. The evaluation will utilize archival grant project data and archival data collected from the scientists in the first two years of the initiative. The evaluation also will collect new data to: (1) Determine relationships, interactions, and connectedness among different network partnerships over time and with policy makers; (2) assess the utility of research tools, interventions, products, and findings from the perspective of key tobacco control stakeholders; and (3) determine key indicators for broad adoption of research products. Results will address research-to-practice gaps by providing a critical window into the process of disseminating evidence-based research tools, products, and science findings in community public health settings. Intended audiences include staff at NIH Institutes and Centers interested in supporting translation/dissemination and implementation science.

OMB approval is requested for one year. There are no costs to respondents other than their time. The total estimated annualized burden hours are 112.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Data collection type	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
SCTC Scientist	Web Survey	60	1	20/60	20
Affiliated Partner	Web Survey	71	1	20/60	24
	Telephone Interview	21	1	40/60	14
	Script to Schedule Telephone Interview	7	1	5/60	1
Pilot Project	Telephone Interview	6	1	40/60	4
Working Group	Telephone Interview	6	1	40/60	4
Coordinating Center	Telephone Interview	2	1	40/60	1
PI/Co-PI	Expert Panel	18	1	90/60	27
	Consent Form	18	1	5/60	2
	Telephone Script to Schedule Interview	6	1	5/60	1
	Telephone Interview	21	1	40/60	14

Dated: September 17, 2014.

Karla Bailey,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2014–22586 Filed 9–22–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 5774–N–02]

Promise Zones Initiative: Second Round Application Process

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: Through this notice, HUD provides notice on the selection process, criteria, and application submission for the second round of the Promise Zone initiative.

DATES: Application due date is 5:00 p.m. on November 21, 2014.

ADDRESSES: Interested eligible organizations are invited to submit applications for a Promise Zone designation. Questions or comments regarding the application process should be directed by email to *Promisezones@hud.gov*. Questions or comments may also be directed by postal mail to the Office of the Deputy Assistant Secretary for Economic Development, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Room 7244, Washington, DC 20410, ATTN: Second Round Promise Zone selections.

FOR FURTHER INFORMATION CONTACT: Brooke Bohnet, U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; telephone number 202–402–6693. 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.

SUPPLEMENTARY INFORMATION:

Background

In his 2013 State of the Union address, President Obama announced the establishment of the Promise Zones initiative to partner with high-poverty communities across the country to create jobs, increase economic security, expand educational opportunities, increase access to quality, affordable housing, and improve public safety.[1] On January 8, 2014, the President announced the first five Promise Zones, which are located in: San Antonio, TX; Philadelphia, PA; Los Angeles, CA; Southeastern Kentucky, KY; and the Choctaw Nation of Oklahoma, OK. Each of these communities (three urban, one rural, and one tribal) submitted a plan on how it will partner with local business and community leaders to make investments that reward hard work and expand opportunity. In exchange, the Federal government is helping these Promise Zone designees secure the resources and flexibility they need to achieve their goals.[2] The urban designations were conferred by HUD, while the rural and tribal designations were conferred by USDA.

Promise Zones Benefits

The Promise Zone designation partners the Federal government with local leaders who are addressing multiple community revitalization challenges in a collaborative way and have demonstrated a commitment to results. Further, Promise Zones will be assigned Federal staff to help navigate the array of Federal assistance and programs already available to them. In addition, eligible applicants in Promise Zones will receive any available (a) preference for certain competitive Federal programs and (b) technical assistance. Subject to enactment by Congress, businesses investing in Promise Zones or hiring residents of Promise Zones will be eligible to receive tax incentives. Altogether, this package of assistance will help local leaders accelerate efforts to revitalize their communities.

The Promise Zone designation will be for a term of 10 years and may be extended as necessary to capture the full term of availability of the Promise Zone tax incentives, if the tax incentives are enacted. During this term, the specific benefits made available to Promise Zones may vary from year to year, and sometimes more often than annually, due to changes in Federal agency policies and changes in appropriations and authorizations for relevant programs. All assistance provided to Promise Zones is subject to applicable regulations, statutes, and changes in federal agency policies, appropriations, and authorizations for relevant programs. Subject to these limitations, the Promise Zone designation commits the Federal government to partner with local leaders who are addressing multiple community revitalization challenges in a collaborative way and have demonstrated a commitment to results.

Response to Public Comment

On April 17, 2014, HUD published a notice in the **Federal Register** 79 FR 21785 to solicit comments from first round applicants, interested parties, and the general public on the first round of the Promise Zones initiative and the proposed selection process for the second round of the Promise Zone initiative. The public comment period

[1] See *http://www.whitehouse.gov/the-press-office/2013/02/15/fact-sheet-president-s-plan-ensure-hard-work-leads-decent-living.*

[2] See *http://www.whitehouse.gov/the-press-office/2014/01/08/fact-sheet-president-obama-s-promise-zones-initiative.*

closed on June 16, 2014. HUD received 95 public comments. Comments were submitted by members of Congress, mayors, city council members, local government officials, public housing agencies, think tanks, nonprofit organizations and the general public. HUD and USDA, in consultation with federal interagency partners of the Promise Zone initiative, provided responses to public comments and can be found at *www.hud.gov/promisezones*.

Second Round Promise Zones Selection Process

This notice announces the opening of the application period for a second round of Promise Zone designations. HUD and USDA have reorganized and revised the Application Guide to make it more readable and user-friendly for applicants. Applications are due by 5:00 p.m. EST on November 21, 2014 with announcements expected in 2015. As a result of this competition, HUD intends to designate six urban communities and USDA intends to designate at least one rural and at least one tribal community. A total of 20 Promise Zone designations will be made by the end of calendar year 2016. Three urban, one rural and one tribal community were designated in January of 2014. Competitions for the remaining round of designations will commence in calendar year 2015. To provide a positive user experience and accommodate an anticipated increase in submissions, applications will be submitted via *www.Max.gov*.

Due to the cross-disciplinary nature of the initiative, the list of eligible Lead Applicants has been updated to reflect that Promise Zone activities are likely to be carried out by a variety of organizations and organization types, including organizations that have specific roles in the delivery of programs funded by different Federal agencies. Most such organizations are eligible under the categories of governmental and nonprofit organizations that were previously listed as eligible Lead Applicants. HUD and USDA included examples might encourage communities to engage organizations that are the most appropriate to respond to their needs and lead revitalization efforts. Eligible Lead Applicants for Urban Promise Zone designations are: Units of General Local Government [3] (UGLG or local government) including an office or department within local government and a county government in partnership with the local municipality, if applicable; or nonprofit organizations applying in partnership with local government; or Public Housing Agency or Local Education Agencies (LEAs), or Metropolitan Planning Organizations or community colleges applying in partnership with local government. Eligible Lead Applicants for Rural and Tribal Promise Zone designations are: Local governments (which includes county, city, town, township, parish, village, governmental authority or other general-purpose political subdivision of a state or combination thereof) and Federally-recognized tribes; [4] Nonprofit organizations applying in partnership with local government or tribal government; Public housing agency applying in partnership with local government, or Tribally Designated Housing Entities (TDHEs) applying in partnership with tribal government; or Local Education Agencies (LEAs) applying in partnership with local or tribal government; or community colleges applying in partnership with local or tribal government.

Any Lead Applicant whose proposed Promise Zone boundaries meet the qualifying criteria set forth in the Second Round Application Guide is eligible to apply for a Promise Zone designation. All of the following must be present in an application for a proposed Urban Promise Zone to be eligible for a designation: (1) The Promise Zone must encompass one or more census tract(s) or portions of census tracts across a contiguous geography; (2) The rate of overall poverty or Extremely Low Income rate (whichever is greater) of residents within the Promise Zone must be at or above 33 percent; (3) Promise Zone boundaries must encompass a population of at least 10,000 but no more than 200,000 residents; and (4) Local leadership, including the mayors or chief executives of all UGLGs represented in the Promise Zone, must demonstrate commitment to the Promise Zone effort. Proposed Promise Zone boundaries may cross UGLG lines, but one Lead Applicant must be identified, and for cross-jurisdictional applications, commitment must be demonstrated by the leadership of all the UGLGs involved.

All the following must be present to be eligible for a Rural or Tribal Promise Zone designation: (1) Rural and Tribal Promise Zones must encompass one or more census tract(s) across a contiguous geography.[5] Rural applicants can define their boundaries by either census tracts or by county, where multiple counties are included. Tribal applicants can define boundaries which may encompass: One or more census tracts and nearby tribally-controlled areas; or reservations; or consortia of tribal and non-tribal jurisdictions; (2) Promise Zone boundaries must encompass a population of no more than 200,000 residents.[6] The population limit of 200,000 may not include any incorporated municipalities or unincorporated areas with individual populations greater than 50,000. Rural and tribal Promise Zones may fall in non-metro and metro counties; (3) The rate of overall poverty or Extremely Low Income rate (whichever is greater) [7] of residents within the Promise Zone must be at or above 20 percent and the Promise Zone must contain at least one census tract with a poverty rate at or above 30 percent; [8] and (4) Local leadership must demonstrate commitment to the Promise Zone effort. Tribal applications must include commitment of tribal jurisdiction(s) represented. Proposed Promise Zone boundaries may cross UGLG or tribal area lines, but one Lead Applicant must be identified, and for cross-jurisdictional applications, commitment must be demonstrated by the leadership of all UGLGs or tribal areas involved.

[3] Unit of general local government as defined in section 102(a)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(1)). *See definition (a) (1) Unit of General Local Government.*

[4] ''Tribal applicants'' are: Federally-recognized tribes as well as duly established political subdivisions of a Federally-recognized tribe. A ''Federally-recognized tribe'' is any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 USCS §§ 1601 et seq.], that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) A Nonprofit organization applying in partnership with a Federally-recognized tribal government may apply as a tribal applicant.

[5] For rural and tribal applications, Promise Zone boundaries that cross state lines and water borders can be considered contiguous.

[6] The population limit of 200,000 is intended to allow for regional collaboration among multiple communities of varying sizes and capacities. The rural eligibility criteria ensure, by definition, that rural Promise Zone applications cannot include communities over 50,000.

[7] The estimated concentration of Extremely Low Income (ELI) households represents an approximation of the percent of households within the specified area whose household combined income is below 30% of the HUD defined Area Median Income (AMI). This ELI indicator is calculated with data from the block group level from Comprehensive Housing Affordability Strategy (CHAS) 2010. The final number included in this report for ''poverty rate'' is the greater of these two indicators.

[8] Applicants are required to use the Promise Zones mapping tool to determine the overall poverty rate. The mapping tool determines the overall poverty rate in two ways and uses the higher percentage.

Under the second round process, only one Promise Zone application may be submitted in association with an UGLG or tribal area per application cycle. If more than one application is submitted for a Promise Zone meeting the qualifying criteria, the one submitted with local government support will be accepted. If more than one application is submitted with local government support in association with a UGLG or tribal area, including applications that cross jurisdictional lines, all of the applications from that UGLG or tribal area will be disqualified for the current application cycle.

If a Promise Zone designated in Round 1 is located within a UGLG in which a new application is being made, the applicant is directed to include an explanation of how, if a second Promise Zone designation is made, the UGLG plans to work with all of the Promise Zone designees at the same time and sustain the level of effort, resources, and support committed to each Promise Zone under its respective Promise Zone plan for the full term of each designation. This explanation should be evidenced by commitments from the UGLG in materials submitted by the mayor or local official in support of the application.

Application Review

Applications for Promise Zone designations will be reviewed by representatives from the Department of Agriculture, the Department of Housing and Urban Development, the Department of Education, the Department of Justice, the Department of Health and Human Services, the Department of Labor, and the Department of Transportation. Additional Federal agencies and outside entities may contribute reviewers, depending upon the anticipated volume of applications.

Reviewers will first verify that the application is submitted by an applicant eligible for selection, by verifying that the proposed Promise Zone meets the qualifying criteria and that the Lead Applicant meets the eligibility criteria for the second round selection process. For urban applications, reviewers will confirm the subcategory in which each application should be considered (large Metropolitan Core Based Statistical Area (Metro CBSA) or small/medium Metro CBSA).[9]

Rural applications will be ranked against other rural applications, tribal applications will be ranked against other tribal applications, and urban applications will be ranked against other urban applications. An application must score a total of 75 points or more out of 100 points, to be considered for a designation (scoring 75 points or more means that applications fall within the ''competitive range''). Once scored, applications will be ranked competitively within each of the three Promise Zones categories and within the urban subcategories, as applicable.

HUD intends to designate at least one small/medium Metro CBSA. If the number of eligible applications determined to belong to the small/medium Metro CBSA subcategory is fewer than the greater of (1) five total applications, or (2) ten percent of the total number of urban applications received, then the applications in the small/medium Metro CBSA subcategory will be included in the large Metro CBSA subcategory and ranked against those applications. In addition to the application materials, reviewers may consider public information available from participating agency records, the name check review, public sources such as newspapers, Inspector General or Government Accountability Office reports or findings. Any evidence cited in the Goals and Activities Template may also be reviewed.

Application Submission

Applications must provide a clear description of how the Promise Zone designation would accelerate and strengthen the community's efforts at comprehensive community revitalization. No substantive or technical corrections will be accepted or reviewed after the application deadline. The *Second Round Application Guide* can be found at *www.hud.gov/promisezones.* Applications are due via the Promise Zone application portal at *www.Max.gov* by 5:00 p.m. EST on November 21, 2014. Directions on how to access and use the application portal are available at *www.hud.gov/promisezones.*

To prepare for the number of applications, an optional Letter of Intent is available in the Promise Zone application portal at *www.Max.gov* and is requested by October 17, 2014. If the Lead Applicant requests to use alternative data sources to meet the eligibility criteria or for the Need application section, a one-page explanation noting the alternative data source must be submitted to *pzapplications@hud.gov* with the subject line ''Alternative data source request'' by October 17, 2014 to be approved by the relevant designating agency (HUD or USDA).

Dated: September 17, 2014.

Carol Galante,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2014–22569 Filed 9–22–14; 8:45 am]

BILLING CODE 4210–67–P

[9] Urban application subcategories are defined as: Large Metro CBSA: The proposed Promise Zone community is located in a Metropolitan Core Based Statistical Area (Metro CBSA) with a total population of 500,000 or more. Small/medium Metro CBSA: The proposed Promise Zone community is located within the geographic boundaries of a Metro CBSA with a population of 499,999 or less. Additional information regarding Metropolitan Core Based Statistical Areas and Principal City can be found at *http://www.whitehouse.gov/sites/default/files/omb/bulletins/2013/b13-01.pdf.*

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2014–N133; FXES11130900000C2–145–FF09E32000]

Endangered and Threatened Wildlife and Plants; 5-Year Status Reviews of 27 Southeastern Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of reviews; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are initiating 5-year status reviews of 27 species under the Endangered Species Act of 1973, as amended (Act). We conduct these reviews to ensure that the classification of species as threatened or endangered on the Lists of Endangered and Threatened Wildlife and Plants is accurate. A 5-year review is an assessment of the best scientific and commercial data available at the time of the review. We are requesting submission of information that has become available since the last review of each of these species.

DATES: To allow us adequate time to conduct these reviews, we must receive your comments or information on or before November 24, 2014. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: For instructions on how to submit information and review information we receive on these species, see ''Request for New Information.''

FOR FURTHER INFORMATION CONTACT: For species-specific information, see ''Request for New Information.''

SUPPLEMENTARY INFORMATION:

Why do we conduct a 5-year review?

Under the Act (16 U.S.C. 1531 *et seq.*), we maintain lists of endangered and threatened wildlife and plant species in

the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for wildlife) and 17.12 (for plants). Section 4(c)(2)(A) of the Act requires us to review each listed species' status at least once every 5 years. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species under active review. For additional information about 5-year reviews, go to *http://www.fws.gov/endangered/what-we-do/recovery-overview.html,* scroll down to ''Learn More about 5-Year Reviews,'' and click on our factsheet.

Species Under Review

This notice announces our active review of 17 species that are currently listed as endangered:

Fish and Wildlife

Florida salt marsh vole (*Microtus pennsylvanicus dukecampbelli*)
Bachman's warbler (*Vermivora bachmanii*)
Reticulated flatwoods salamander (*Ambystoma bishopi*)
Southern acornshell (*Epioblasma othcaloogensis*)
Ovate clubshell (*Pleurobema perovatum*)
Southern clubshell (*Pleurobema decisum*)
Upland combshell (*Epioblasma metastriata*)
Triangular kidneyshell (*Ptychobranchus greenii*)
Coosa moccasinshell (*Medionidus parvulus*)
Dark pigtoe (*Pleurobema furvum*)
Southern pigtoe (*Pleurobema georgianum*)
Kentucky cave shrimp (*Palaemonias ganteri*)

Plants

Chrysopsis floridana (Florida golden aster)
Lupinus aridorum (Scrub lupine)
Harperocallis flava (Harper's beauty)
Prunus geniculata (Scrub plum)
Warea amplexifolia (Wide-leaf warea)

This notice also announces our active review of 10 species that are currently listed as threatened:

Fish and Wildlife

Atlantic salt marsh snake (*Nerodia clarkii taeniata*)
Frosted flatwoods salamander (*Ambystoma cingulatum*)
Alabama heelsplitter (=inflated) (*Potamilus inflatus*)
Alabama moccasinshell (*Medionidus acutissimus*)
Orange-nacre mucket (*Lampsilis perovalis*)
Fine-lined pocketbook (*Lampsilis altilis*)
Squirrel Chimney cave shrimp (*Palaemonetes cummingii*)

Plants

Calyptronoma rivalis (Palma de manaca)
Geocarpon minimum (No common name)
Solidago albopilosa (White-haired goldenrod)

What information do we consider in our review?

A 5-year review considers the best scientific and commercial data that have become available since the current listing determination or most recent status review of each species, such as:

A. Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions, including but not limited to amount, distribution, and suitability;

C. Conservation measures that have been implemented to benefit the species;

D. Threat status and trends (see five factors under heading ''How Do We Determine Whether A Species Is Endangered or Threatened?''); and

E. Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

New information will be considered in the 5-year review and ongoing recovery programs for the species.

Definitions

A. *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate which interbreeds when mature.

B. *Endangered* means any species that is in danger of extinction throughout all or a significant portion of its range.

C. *Threatened* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

How do we determine whether a species is endangered or threatened?

Section 4(a)(1) of the Act establishes that we determine whether a species is endangered or threatened based on one or more of the following five factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

Request for New Information

To do any of the following, contact the person associated with the species you are interested in below:

A. To get more information on a species;

B. To submit information on a species; or

C. To review information we receive, which will be available for public inspection by appointment, during normal business hours, at the listed addresses.

Mammals

• Florida salt marsh vole: North Florida Ecological Services Field Office, U.S. Fish and Wildlife Service, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256; fax 904–731–3045. For information on these species, contact Bill Brooks at the ES Field Office (by phone at 904–731–3136 or by email at *bill_brooks@fws.gov*).

Birds

• Bachman's warbler: South Carolina Ecological Services Field Office, U.S. Fish and Wildlife Service, 176 Croghan Spur Road, Suite 200, Charleston, SC 29407; fax 843–727–4218. For information on this species, contact Paula Sisson at the ES Field Office (by phone at 843–727–4707, or by email at *paula_sisson@fws.gov*).

Reptiles

• Atlantic salt marsh snake: North Florida Ecological Services Field Office, U.S. Fish and Wildlife Service, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256; fax 904–731–3045. For information on these species, contact Todd Mecklenborg at the ES Field Office (by phone at 727–892–4104, or by email at *todd_mecklenborg@fws.gov*).

Amphibians

• Reticulated flatwoods salamander and frosted flatwoods salamander: Panama City Ecological Services Field Office, U.S. Fish and Wildlife Service, 1601 Balboa Ave., Panama City, FL 32405; fax 850–763–2177. For information on these species, contact Harold Mitchell at the ES Field Office (by phone at 850–769–0552, or by email at *harold_mitchell@fws.gov*).

Clams

• For all clam species: Alabama Ecological Services Field Office, U.S.

Fish and Wildlife Service, 1208–B Main Street, Daphne, AL 36526; fax 251–441–6222. For information on these species, contact Jeff Powell at the ES Field Office (by phone at 251–441–5181, or by email at *jeff_powell@fws.gov*).

Crustaceans and Plants

• Kentucky cave shrimp and white haired goldenrod: Kentucky Ecological Services Field Office, U.S. Fish and Wildlife Service, 330 West Broadway, Suite 365, Frankfort, KY 40601; fax 502–695–1024. For information on this species, contact Mike Floyd at the ES Field Office (by phone at 502–695–0468, or by email at *mike_floyd@fws.gov*).

• Squirrel Chimney cave shrimp, Florida golden aster, scrub lupine, scrub plum: North Florida Ecological Services Field Office, U.S. Fish and Wildlife Service, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256; fax 904–731–3045. For information on these species, contact Todd Mecklenborg at the ES Field Office (by phone at 727–892–4104, or by email at *todd_mecklenborg@fws.gov*).

• *Geocarpon minimum:* Arkansas Ecological Services Field Office, U.S. Fish and Wildlife Service, 26320 Highway 33, Augusta, AR 72006; fax 870–347–2908. For information on this species, contact Jason Phillips at the ES Field Office (by phone at 870–347–1617, or by email at *jason_phillips@fws.gov*).

• Harper's beauty: Panama City Ecological Services Field Office, U.S. Fish and Wildlife Service, 1601 Balboa Ave., Panama City, FL 32405; fax 850–763–2177. For information on these species, contact Vivian Negron-Ortiz at the ES Field Office (by phone at 850–769–0552 ext. 231, or by email at *vivian_negronortiz@fws.gov*).

• Palma de manaca: Caribbean Ecological Services Field Office, U.S. Fish and Wildlife Service, PO Box 491, Boqueron, PR 00622; fax 787–851–7440. For information on this species, contact Maritza Vargas at the ES Field Office (by phone at 787–851–7297 ext. 215, or by email at *maritza_vargas@fws.gov*).

We request any new information concerning the status of any of these 27 species. See ''What Information Do We Consider In Our Review?'' heading for specific criteria. Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that the entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We publish this document under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: August 1, 2014.

Cynthia K. Dohner,

Regional Director, Southeast Region.

[FR Doc. 2014–22594 Filed 9–22–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2014–0019; FXIA16710900000–134–FF09A00000]

Advisory Council on Wildlife Trafficking; Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a public meeting of the Advisory Council on Wildlife Trafficking (Council). The Council's purpose is to provide expertise and support to the Presidential Task Force on Wildlife Trafficking. You may attend the meeting in person, or you may participate via telephone. At this time, we are inviting submissions of questions and information for consideration during the meeting.

DATES: *Meeting:* The meeting will be held on Friday, October 17, 2014, from 9 a.m. to 1 p.m. Eastern Time.

Registering to Attend the On-Site Meeting: In order to attend the meeting on site, you must register by close of business on October 3, 2014. (You do not need to register in order to listen via phone.) Please submit your name, email address, and phone number to Mr. Cade London to complete the registration process (see **FOR FURTHER INFORMATION CONTACT**). Because there is limited seating available, registrations will be taken on a first-come, first-served basis. Members of the public requesting reasonable accommodations, such as hearing interpreters, must contact Mr. London, in writing (preferably by email), no later than October 3, 2014.

Submitting Questions or Information: If you wish to provide us with questions and information to be considered during the meeting, your material must be received or postmarked on or before October 10, 2014. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section) must be received by 11:59 p.m. Eastern Time on October 10, 2014.

Making an Oral Presentation at the Meeting: If you wish to make an oral presentation at the meeting (in person or by phone), contact Mr. London no later than October 3, 2014 (see **FOR FURTHER INFORMATION CONTACT**). For more information, see Making an Oral Presentation under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: *Meeting Location:* The meeting will be held in the U.S. Department of the Interior, South Interior Building Auditorium, 1951 Constitution Avenue NW., Washington, DC 20240.

Meeting Call-In Numbers: Members of the public unable to attend the meeting in person may call in at 888–603–9751 (toll free) or 1–517–623–4156 (toll).

Submitting Questions or Information: You may submit questions or information for consideration during the meeting by one of the following methods:

1. *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–HQ–IA–2014–0019. Then click on the ''Search'' button. You may submit questions or information by clicking on ''Comment Now!''

2. *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–HQ–IA–2014–0019; Division of Policy and Directives Management; MS: BPHC, U.S. Fish and Wildlife Service; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We will not accept email or faxes. We request that you send comments 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 Submitting Public Comments section below for more information).

Reviewing Comments Received by the Service: See Reviewing Public Comments in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Mr. Cade London, Special Assistant, International Affairs, U.S. Fish and Wildlife Service, by email at *cade_london@fws.gov* (preferable method of contact); by U.S. mail at U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: IA; Falls Church, VA

22041–3803; by telephone at (703) 358–2584; or by fax at (703) 358–2276.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act (5 U.S.C. App.), we announce that the Advisory Council on Wildlife Trafficking (Council) will hold a meeting to discuss the implementation of the National Strategy for Combating Wildlife Trafficking, and other Council business as appropriate. The Council's purpose is to provide expertise and support to the Presidential Task Force on Wildlife Trafficking.

You may attend the meeting in person, or you may participate via telephone. At this time, we are inviting submissions of questions and information for consideration during the meeting.

Background

Pursuant to Executive Order 13648, the Advisory Council on Wildlife Trafficking was formed on August 30, 2013, to advise the Presidential Task Force on Wildlife Trafficking, through the Secretary of the Interior, on national strategies to combat wildlife trafficking, including but not limited to:

1. Effective support for anti-poaching activities;
2. Coordinating regional law enforcement efforts;
3. Developing and supporting effective legal enforcement mechanisms; and
4. Developing strategies to reduce illicit trade and consumer demand for illegally traded wildlife, including protected species.

The eight-member Council, appointed by the Secretary of the Interior, includes former senior leadership within the U.S. Government, as well as chief executive officers and board members from conservation organizations and the private sector. For more information on the Council and its members, visit *http://www.fws.gov/international/advisory-council-wildlife-trafficking/.*

Meeting Agenda

The Council will consider:

1. Measures to combat wildlife trafficking, including but not limited to legal frameworks, communication, enforcement, and public/private partnerships;
2. Administrative topics; and
3. Public comment and response.

The Advisory Council has been focusing its primary efforts to date on addressing the current wildlife trafficking crisis affecting elephants and rhinos, which are being killed in record numbers for their ivory and rhino horn, respectfully. Because the President's Executive Order to Combat Illegal Wildlife Trafficking has a broader focus on species that are being affected by illegal wildlife trafficking, the Council intends to devote a significant portion of its upcoming public meeting to gather information on other protected species—besides elephants and rhinos—that are facing potential extinction risk or other severe threats due to illegal wildlife trafficking. To facilitate the gathering of this information, the Council would like to obtain testimony from experts who are representing organizations that are engaged in wildlife protection activities at the upcoming meeting on October 17. Testimony can include a written statement of reasonable length, and a request to make an oral presentation of approximately 5 minutes to the Council (and no more than 7 minutes), which identifies and discusses additional species that they believe merit additional attention by the Council and the Task Force, and any specific recommendations regarding steps that the Task Force and Advisory Council should consider taking to protect such species. Experts representing relevant organizations who wish to participate in the upcoming meeting, and who want to make an oral presentation in person or by phone, should contact Mr. Cade London (**FOR FURTHER INFORMATION CONTACT**) no later than the date given in the **DATES** section for *Making an Oral Presentation at the Meeting.* Following the presentations by experts, members of the public also will have an opportunity to be heard for 3 minutes. Individuals requesting general public speaking slots should again contact Mr. Cade London (**FOR FURTHER INFORMATION CONTACT**) no later than the date given in the **DATES** section for *Making an Oral Presentation at the Meeting.*

The final agenda will be posted on the Internet at *http://www.fws.gov/international/advisory-council-wildlife-trafficking/,* as well as at *http://www.regulations.gov.*

Making an Oral Presentation

Members of the public who want to make an oral presentation in person or by telephone at the meeting will be prompted during the public comment section of the meeting to provide their presentation and/or questions. If you want to make an oral presentation in person or by phone, contact Mr. Cade London (**FOR FURTHER INFORMATION CONTACT**) no later than the date given in the **DATES** section for *Making an Oral Presentation at the Meeting.*

Registered speakers who wish to expand on their oral statements, or those who wanted to speak but could not be accommodated on the agenda, are invited to submit subsequent written statements to the Council after the meeting. Such written statements must be received by Mr. London, in writing (preferably via email), no later than October 24, 2014.

Submitting Public Comments

You may submit your questions and information by one of the methods listed in **ADDRESSES**. We request that you send comments by only one of the methods described in **ADDRESSES**.

If you submit information via the Federal eRulemaking Portal (*http://www.regulations.gov*), your entire submission—including any personal identifying information—will be posted on the Web site.

If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions at *http://www.regulations.gov.*

Reviewing Public Comments

Comments and materials we receive will be available for public inspection at *http://www.regulations.gov.* Alternatively, you may view them by appointment during normal business hours at 5275 Leesburg Pike, Falls Church, VA 22041–3803. Please contact Mr. London (see **FOR FURTHER INFORMATION CONTACT**).

Obtaining Meeting Minutes

Summary minutes of the meeting will be available on the Council Web site at *http://www.fws.gov/international/advisory-council-wildlife-trafficking/,* as well as at *http://www.regulations.gov.* Alternatively, you may view them by appointment during normal business hours at 4401 N. Fairfax Drive, Room 110, Arlington, VA 22203. Please contact Mr. London (see **FOR FURTHER INFORMATION CONTACT**).

Dated: September 17, 2014.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2014–22538 Filed 9–22–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–16592; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before August 23, 2014. Pursuant to section 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by October 8, 2014. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 3, 2014.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ARIZONA

Coconino County

Negrette House, 120 S. 6th St., Williams, 14000823

CALIFORNIA

Amador County

Swain, C.W., House, 311 Church & 330 Buena Vista Sts., Ione, 14000824

DELAWARE

Kent County

St. Stephen's P.E. Church, 110 Fleming St., Harrington, 14000825

FLORIDA

Lee County

Pine—Aire Lodge, 13771 Waterfront Dr., Boleela, 14000826

Palm Beach County

Old Belle Glade Town Hall, 33 W. Ave. A, Belle Glade, 14000827

KANSAS

Butler County

Whitewater Falls Stock Farm, (Agriculture-Related Resources of Kansas MPS) 433 Falls Rd., Towanda, 14000828

Douglas County

Martin, Handel T., House, (Lawrence, Kansas MPS) 1709 Louisiana St., Lawrence, 14000830

Lane County

Schwartz, Alexander & Anna, Farm, (Agriculture-Related Resources of Kansas MPS) 57 E. Rd. 70, Dighton, 14000829

Montgomery County

First Congregational Church, 400 N. 9th St., Independence, 14000831

Sedgwick County

Derby Public School—District 6, (Public Schools of Kansas MPS) 716 E. Market St., Derby, 14000832

Shawnee County

Masonic Grand Lodge Building, 320 SW. 8th Ave., Topeka, 14000833

MAINE

Kennebec County

Colonial Theater, 139 Water St., Augusta, 14000834

Winthrop Mills Company, 149–151 Main St., Winthrop, 14000835

Knox County

Union Meeting House, (Appleton), 2875 Sennebec Rd., Appleton, 14000836

Lincoln County

Sprucewold Lodge, 4–9 Nahandra Rd., Boothbay Harbor, 14000837

Penobscot County

Brewer High School, (former), 5 Somerset St., Brewer, 14000838

MARYLAND

Prince George's County

Hard Bargain Farm, 2001 Bryan Point Rd., Accokeek, 14000839

MASSACHUSETTS

Suffolk County

Home for Destitute Jewish Children, 150–156 American Legion Hwy., Boston, 14000840

Worcester County

Upland State Forest—Civilian Conservation Corps Resources Historic District, 205 Westborough Rd., Upton, 14000841

NEW HAMPSHIRE

Carroll County

Pointfield, (Squam MPS) 14 Sabine Point Rd., Sandwich, 14000842

Grafton County

Shepard Hill Historic District, (Squam MPS) 109, 135, 177, 180, 200 Shepard Hill, 6, 19, 31, 33, 35, 41 Coxboro & all of Asquam Rds., 584 US 3, Holderness, 14000843

Rockingham County

Bartlett—Cushman House, 82 Portsmouth Ave., Stratham, 14000844

NEW YORK

Dutchess County

Zion Pilgrim Methodist Episcopal Church, 303 Baxtertown Rd., Fishkill, 14000845

OREGON

Multnomah County

Hanthorn Apartments, 1125 SW. 12th Ave., Portland, 14000846

UTAH

Salt Lake County

International Peace Gardens, 1060 S. 900 W., Salt Lake City, 14000847

WASHINGTON

Clallam County

Tse whit zen Village, Address Restricted, Port Angeles, 14000848

Jefferson County

Hamilton—Worthington House, 101 E. Columbia St., Quilcene, 14000849

A request for removal has been received for the following resource:

IOWA

Linn County

Brewer, Luther A. and Elinore T., House, 847 4th Ave. SE., Cedar Rapids, 98000383

[FR Doc. 2014–22534 Filed 9–22–14; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR02015200, 14XR0687NA, RX185279076000000]

Notice of Availability of a Draft Environmental Impact Statement and Notice of Public Meeting for the Cle Elum Pool Raise, Kittitas County, Washington

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation has made available for public review and comment the Cle Elum Pool Raise Draft Environmental Impact Statement (EIS). The Draft EIS describes the potential environmental effects of the No Action Alternative and four action alternatives to modify the existing radial gates in the Cle Elum Dam spillway to provide an additional 14,600 acre-feet of storage capacity in Cle Elum Reservoir, put the additional stored water to beneficial use, provide for shoreline protection of the reservoir, and

implement necessary environmental mitigation.

DATES: Send written comments on the Draft EIS on or before November 24, 2014.

Two public meetings will be held on the following dates:

1. Tuesday, October 21, 2014, 4 p.m. to 7 p.m., Ellensburg, WA.
2. Wednesday, October 22, 2014, 4 p.m. to 7 p.m., Cle Elum, WA.

ADDRESSES: Send written comments or requests for copies to Ms. Candace McKinley, Bureau of Reclamation, 1917 Marsh Road, Yakima, WA 98901, 509–575–5848, ext. 613, or via email to *cepr@usbr.gov.* The Draft EIS is also accessible from the following Web site: *http://www.usbr.gov/pn/programs/eis/cleelumraise/index.html.*

The public meeting locations are:

1. Ellensburg—Hal Holmes Community Center, 209 N. Ruby Street, Ellensburg, Washington 98926;
2. Cle Elum—U.S. Forest Service, Cle Elum Ranger District, Tom Craven Conference Room, 803 W. 2nd Street, Cle Elum, Washington 98922.

FOR FURTHER INFORMATION CONTACT: Ms. Candace McKinley, 509–575–5848, ext. 613; or by email at *cepr@usbr.gov.*

SUPPLEMENTARY INFORMATION: The Draft EIS documents the potential direct, indirect, and cumulative physical, biological, and socioeconomic environment effects that may result from increasing the reservoir storage capacity.

The Draft EIS evaluates the construction and operation of modified radial gates at Cle Elum Dam to enable a 3-foot raise in the reservoir pool (14,600 acre-feet additional storage capacity), use of the additional stored water to improve instream flows or to supplement the Yakima Project Total Water Supply Available, raising the height of three existing dikes, raising the height of access roads and facilities at the U.S. Forest Service Cle Elum River Campground and Wish-Poosh boat ramp, implementing shoreline protection to reduce erosion, and acquiring private property and easements to accommodate shoreline protection. The primary project objectives are to: (1) Fulfill the intent of the congressional authorization given in Sections 1205 and 1206, Title XII, Yakima River Basin Water Enhancement Project (YRBWEP), of Public Law 103–434, Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994; (2) improve aquatic resources for fish habitat, rearing, and migration in the Cle Elum and upper Yakima Rivers; and (3) (if authorized by congress) help meet demands for agricultural water supply.

The primary study area encompasses the Cle Elum Reservoir, the adjacent area that would be inundated by the proposed 3-foot raise in the full-pool reservoir level, and areas that could be directly affected by construction or operations-related activities, including the spillway gates, dikes, adjacent lands, and public recreation resources. The extended study area includes the Cle Elum and Yakima rivers downstream from Cle Elum Dam; lands, municipalities, and instream uses served by Cle Elum and Yakima rivers water rights; and the larger Yakima Project area.

Authority

The YRBWEP, of which the Cle Elum Pool Raise is one component, was authorized in Sections 1205 and 1206 of Title XII of the Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994.

Public Review of Draft EIS

Copies of the Draft EIS are available for public review at the following locations:

1. Bureau of Reclamation, Columbia-Cascades Area Office, 1917 Marsh Road, Yakima, Washington 98901.
2. Washington State Department of Ecology, 15 W. Yakima Avenue, Suite 200, Yakima, Washington 98902.

Libraries

1. Carpenter Memorial Library, 302 N. Pennsylvania Ave., Cle Elum, WA 98922.
2. Ellensburg Public Library, 209 N. Ruby St., Ellensburg, WA 98926.
3. Roslyn Public Library, 201 S. First St., Roslyn, WA 98941.
4. Benton City Library, 810 Horne Dr., Benton City, WA 99320.
5. Kennewick Library, 1620 S. Union St., Kennewick, WA 99338.
6. Kittitas Public Library, 200 N. Pierce St., Kittitas, WA 98934.
7. Mid-Columbia Library, 405 S. Dayton St., Kennewick, WA 99336.
8. Pasco Library, 1320 W. Hopkins St., Pasco, WA 99301.
9. Prosser Library, 902 7th St., Prosser, WA 99350.
10. Richland Public Library, 955 Northgate Drive, Richland, WA 99352.
11. Sunnyside Public Library, 621 Grant Ave., Sunnyside, WA 98944.
12. Toppenish Library, 1 S. Elm St., Toppenish, WA 98948.
13. Wapato Library, 119 E. 3rd St., Wapato, WA 98951.
14. Washington State Library, Point Plaza East, 6880 Capitol Blvd. SE., Tumwater, WA 98504.
15. West Richland Library, 3803 W. Van Giesen St., Richland, WA 99353.
16. Yakama Nation Library, 100 Spiel-Yi Loop, Toppenish, WA 98948.
17. Yakima Valley Regional Library, 102 N. 3rd St., Yakima, WA 98901.

Special Assistance for Public Meetings

If special assistance is required at the public meetings, please contact Ms. Candace McKinley, at *cepr@usbr.gov* or 509–575–5848, ext. 613. Please notify Ms. McKinley as far in advance of the meeting as possible to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified. TTY users may dial 711 to obtain a toll-free TTY relay.

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: September 17, 2014.

Lorri J. Lee,

Regional Director, Pacific Northwest Region.

[FR Doc. 2014–22592 Filed 9–22–14; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1012 (Second Review)]

Certain Frozen Fish Fillets From Vietnam; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on certain frozen fish fillets from Vietnam would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review 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:* September 5, 2014.

FOR FURTHER INFORMATION CONTACT: Keysha Martinez (202–205–2136), 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 Friday, September 5, 2014, the Commission determined that the domestic interested party group response to its notice of institution (79 FR 31345, June 2, 2014) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on Wednesday, October 1, 2014, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before Monday, October 6, 2014, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by Monday, October 6, 2014. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to filing have been amended. The amendments took effect on July 25, 2014. See 79 FR 35920 (June 25, 2014) and the revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (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: This review is 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: September 18, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–22595 Filed 9–22–14; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the responses submitted by processers America's Catch Inc., Alabama Catfish Inc. dba Harvest Select Catfish, Inc., Heartland Catfish Co., Magnolia Processing, Inc. dba Pride of the Pond, Simmons Farm Raised Catfish, Inc., and Guidry's Catfish Inc. to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–512 and 731–TA–1248 (Final)]

Carbon and Certain Alloy Steel Wire Rod From China; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–512 and 731–TA–1248 (Final) under sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized and less-than-fair-value imports from China of carbon and certain alloy steel wire rod, provided for in subheadings 7213.91.30, 7213.91.45, 7213.91.60, 7213.99.00, 7227.20.00, and 7227.90.60 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: *Effective Date:* September 8, 2014.

FOR FURTHER INFORMATION CONTACT: Carolyn Esko (202–205–3002), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as ''certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately circular cross section, less than 19.00 mm in actual solid cross-sectional diameter. Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; or (e) concrete reinforcing bars and rods. Also excluded are free cutting steel (also known as free machining steel) products (i.e., products that contain by weight one or more of the following elements: 0.1 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).''

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of carbon and certain alloy steel wire rod, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on January 31, 2014, by ArcelorMittal USA LLC, Chicago, Illinois; Charter Steel, Saukville, Wisconsin; Evraz Pueblo, Pueblo, Colorado; Gerdau Ameristeel US Inc., Tampa, Florida; Keystone Consolidated Industries, Inc., Dallas, Texas; and Nucor Corporation, Charlotte, North Carolina.

Participation in the investigations 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 the final phase of these investigations 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, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

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 the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations 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 final phase of these investigations will be placed in the nonpublic record on Wednesday, October 29, 2014, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on Wednesday, November 12, 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 Thursday, November 6, 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 (if needed) on Monday, November 10, 2014. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 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 who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 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 207.25 of the Commission's rules. The deadline for filing posthearing briefs is Wednesday, November 19, 2014. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before Wednesday, November 19, 2014. On Monday, December 8, 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 Wednesday, December 10, 2014, but such final comments must not contain new factual information and must otherwise comply with section 207.30 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 investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: September 18, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–22559 Filed 9–22–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–930]

Certain Laser Abraded Denim Garments

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 18, 2014, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of RevoLaze, LLC of Westlake, Ohio and TechnoLines, LLC of Westlake, Ohio. A supplement to the complaint was filed on September 5, 2014. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for

importation, and the sale within the United States after importation of certain laser abraded denim garments by reason of infringement of certain claims of U.S. Patent No. 5,990,444 (''the '444 patent''); U.S. Patent No. 6,140,602 (''the '602 patent''); U.S. Patent No. 6,252,196 (''the '196 patent''); U.S. Patent No. 6,664,505 (''the '505 patent''); U.S. Patent No. 6,819,972 (''the '972 patent''); and U.S. Patent No. 6,858,815 (''the '815 patent''). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained 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 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.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2014).

*S*cope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on September 16, 2014, *Ordered That* —

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain laser abraded denim garments by reason of infringement of one or more of claims 1–3, 8, 21, 33, 34, 46, 69, 70, and 72 of the '444 patent; claims 1, 14, 15, 53, 73, 83, 85, 94, 97, 99, 112, 120, 122–125, and 141–143 of the '602 patent; claims 5, 11, 13, 14, and 16 of the '196 patent; claims 1 and 49–51 of the '505 patent; claims 1, 2, 4–6, 11, 12, 16–19, 56–59, 61, 63, 64, 72, 77, 78, 83–87, and 92–95 of the '972 patent; and claims 13 and 14 of the '815 patent, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

RevoLaze, LLC, 29300 Clemens Rd., Westlake, OH 44145.

TechnoLines, LLC, 29300 Clemens Rd., Westlake, OH 44145.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Abercrombie & Fitch Co., 6301 Fitch Path, New Albany, Ohio 43054.

American Eagle Outfitters, Inc., 77 Hot Metal Street, Pittsburgh, Pennsylvania 15203.

BBC Apparel Group, LLC, 1407 Broadway, Suite 503, New York, New York 10018.

Gotham Licensing Group, LLC, 1407 Broadway, Suite 506, New York, New York 10018.

The Buckle, Inc., 2407 West 24th Street, Kearney, Nebraska 68845.

Buffalo International ULC, 400 Sauve West, Montreal, Quebec H3L 1Z8, Canada.

1724982 Alberta ULC, 400 Sauve West, Montreal, Quebec H3L1Z8, Canada.

Diesel S.p.A., via dell'Industria, 4/6, 36042 Breganze (VI), Italy.

DL1961 Premium Denim Inc., 530 7th Avenue, Suite 1505, New York, New York 10018.

Eddie Bauer LLC, 10401 NE 8th Street, Suite 500, Bellevue, Washington 98004.

The Gap, Inc., 2 Folsom Street, San Francisco, California 94105.

Guess?, Inc., 1444 South Alameda Street, Los Angeles, California 90021.

H&M Hennes & Mauritz AB, Mäster Samuelsgatan 46A, SE–106 38 Stockholm, Sweden.

H&M Hennes & Mauritz LP, 110 Fifth Avenue, 11th Floor, New York, New York 10011.

Roberto Cavalli S.p.A., Piazza San Babila 3, 20122 Milan, Italy.

Koos Manufacturing, Inc., 2741 Seminole Ave., South Gate, CA 90280.

Levi Strauss & Co., 1155 Battery Street, San Francisco, California 94111.

Lucky Brand Dungarees, Inc., 540 S. Santa Fe Ave., Los Angeles, CA 90013.

Fashion Box S.p.A., Via Marcoui, 1, 31011 Localita Casella, Asolo (Treviso), Italy.

VF Corporation, 105 Corporate Center Blvd., Greensboro, North Carolina 27408.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: September 17, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–22539 Filed 9–22–14; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TIME AND DATES: The Members of the National Council on Disability (NCD) will hold a quarterly meeting Sunday, October 5, 2014 through Tuesday, October 7, 2014. On October 5, from 3:00 to 5:00 p.m., the Council will visit the National Center for Civil and Human Rights. On October 6, from 9:00 a.m. to 5:30 p.m., the Council will receive testimony about the school-to-prison pipeline. On October 7, the Council will have its business meeting from 9:00 a.m. to 12:15 p.m.

PLACE: The tour of the National Center for Civil and Human Rights on October 5 will take place at the museum at 100 Ivan Allen Jr. Blvd., Ivan Allen Jr Blvd., Atlanta, GA 30313. The quarterly meeting on October 6 and 7 will take place in the auditorium of the Shepherd Center, 2020 Peachtree St, Atlanta, GA 30309.

Interested parties may join the meeting in person or by phone in a listening-only capacity (with the exception of the public comment period) using the following call-in number: 1–888–312–3048; Conference ID: 7550293; Conference Title: NCD Meeting; Host Name: Jeff Rosen.

MATTERS TO BE CONSIDERED: The Council will receive testimony on the school-to-prison on October 6 and discuss the information with the intention of formulating draft recommendations. On October 7, the Council will receive updates on its policy projects; vote to approve a transportation report, a Medicaid managed care report; and its annual progress report; review draft findings and recommendations of its home- and community-based services report; discuss and approve its FY15 policy work scope; and discuss issues which impact the effectiveness of the ADA.

AGENDA: The times provided below are approximations for when each agenda item is anticipated to be discussed (all times Eastern):

Sunday, October 5, 2014

3:00–5:00 p.m.—NCD visit to the National Center for Civil and Human Rights

Monday, October 6, 2014

9:00–10:00 a.m.—Welcome, Introduction, Purpose of the meeting
10:00–11:00 a.m.—Panel: Barriers to minority access to an equal opportunity to benefit from IDEA
11:00 a.m.–12:30 p.m.—Breaking Down the Barriers
12:30–1:00 p.m.—Break
1:00–2:00 p.m.—Panel: How special education services can disrupt the school-to-prison pipeline
2:00–3:00 p.m.—Discussion: How we can ensure that minority students with disabilities have access to quality special education services?
3:00–3:15 p.m.—Break
3:00–3:15 p.m.—Break
3:15–5:15 p.m.—Discussion: Recommendations to Congress and the Administration on policies designed to end disparities in discipline and promote positive outcomes for minority students with disabilities
5:15–5:30 p.m.—Closing: Summary of the day's discussions
5:30 p.m.—Adjournment

Tuesday, October 7, 2014

9:00–9:30 a.m.—Call to Order and Council Reports
9:30–10:30 a.m.—NCD Policy Projects
10:30–10:45 a.m.—Break
10:45–11:45 a.m.—ADA 25th Anniversary Discussion
11:45 a.m.–12:15 p.m.—Public Comment
12:15 p.m.—Adjourn

PUBLIC COMMENT: To better facilitate NCD's public comment periods, any individual interested in providing public comment is asked to register their intent to provide comment in advance by sending an email to *PublicComment@ncd.gov* with the subject line ''Public Comment'' with your name, organization, state, and topic of comment included in the body of your email. Full-length written public comments may also be sent to that email address. All emails to register for public comment at the October quarterly meeting must be received by Thursday, October 2, 2014. Priority will be given to those individuals who are in-person to provide their comments. Those commenters on the phone will be called on according to the list of those registered via email. Due to time constraints, NCD asks all commenters to limit their comments to three minutes.

CONTACT PERSON FOR MORE INFORMATION: Anne Sommers, NCD, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (V), 202–272–2074 (TTY).

ACCOMMODATIONS: A CART streamtext link has been arranged for each day of the business meeting. For Monday, beginning at 9:00 a.m., ET, the web link to access CART is *http://www.streamtext.net/text.aspx?event=100614ncd0900am.* For Tuesday, beginning at 9:00 a.m., ET, the web link to access CART is *http://www.streamtext.net/text.aspx?event=100714ncd900am.* Those who plan to attend the meeting in-person and require accommodations should notify NCD as soon as possible to allow time to make arrangements. Please note: To help reduce exposure to fragrances for those with multiple chemical sensitivities, NCD requests that all those attending the meeting in person please refrain from wearing scented personal care products such as perfumes, hairsprays, colognes, and deodorants.

Dated: September 18, 2014.

Rebecca Cokley,

Executive Director.

[FR Doc. 2014–22666 Filed 9–19–14; 11:15 am]

BILLING CODE 6820–MA–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Call for Nominations

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Call for Nominations.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is advertising for nominations for the position of Diagnostic Radiologist on the Advisory Committee on the Medical Uses of Isotopes (ACMUI). Nominees should be a currently practicing diagnostic radiologist.

DATES: Nominations are due on or before November 24, 2014.

NOMINATION PROCESS: Submit an electronic copy of resume or curriculum vitae, along with a cover letter and endorsement letter(s) from professional organizations, or others, to Ms. Sophie Holiday, *sophie.holiday@nrc.gov.* The cover letter should describe the nominee's current duties and responsibilities and express the nominee's interest in the position. Please ensure that the resume or curriculum vitae includes the following information, if applicable: Education; certification; professional association membership and committee membership activities; duties and responsibilities in current and previous clinical, research, and/or academic position(s).

FOR FURTHER INFORMATION CONTACT: Ms. Sophie Holiday, U.S. Nuclear Regulatory Commission, Office of Federal and State Materials and Environmental Management Programs; (301) 415–7865; *sophie.holiday@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC is seeking nominations for diagnostic radiologists who possess training and experience with the diagnostic use of byproduct material. The diagnostic radiologist would also possess knowledge of imaging modalities that are not regulated by the NRC such as diagnostic ultrasound, magnetic resonance imaging, computed tomography (CT) and interventional radiology. This individual will advise the NRC on current and emerging technologies that combine modalities that are regulated by the NRC (e.g., positron emission tomography) with those that are not regulated by the NRC (e.g., CT).

The ACMUI diagnostic radiologist provides advice on issues associated with the regulation of applications of byproduct material for imaging, localization and therapeutic purposes. This advice includes providing input on NRC proposed rules and guidance, providing recommendations on the training and experience requirements for physicians specializing in nuclear medicine and radiation therapy, identifying medical events associated with these uses, evaluating non-routine uses of byproduct material and emerging medical technologies, bringing key issues in the nuclear medicine and radiology community to the attention of NRC staff, as they relate to radiation safety and NRC medical-use policy.

ACMUI members are selected based on their educational background, certification(s), work experience, involvement and/or leadership in professional society activities, and other information obtained in letters or during the selection process.

ACMUI members possess the medical and technical skills needed to address evolving issues. The current membership is comprised of the following professionals: (a) Nuclear medicine physician; (b) nuclear cardiologist; (c) two radiation oncologists; (d) diagnostic radiologist; (e) therapy medical physicist; (f) nuclear medicine physicist; (g) nuclear pharmacist; (h) radiation safety officer; (i) patients' rights advocate; (i) Food and Drug Administration representative; and (j) Agreement State representative. For additional information about membership on the ACMUI, visit the ACMUI Membership Web page, *http://www.nrc.gov/aboutnrc/regulatory/advisory/acmui/membership.html.*

NRC is inviting nominations for the Diagnostic Radiologist physician position on the ACMUI. The term of the individual currently occupying this position will end on January 10, 2015. Committee members currently serve a four-year term and may be considered for reappointment to an additional term.

Nominees must be U.S. citizens and be able to devote approximately 160 hours per year to Committee business. Members are expected to attend semi-annual meetings in Rockville, Maryland and to participate in teleconferences, as needed. Members who are not Federal employees are compensated for their service. In addition, these members are reimbursed for travel and correspondence expenses. Full-time Federal employees are reimbursed travel expenses only.

Security Background Check: The selected nominee will undergo a thorough security background check. Security paperwork may take the nominee several weeks to complete. Nominees will also be required to complete a financial disclosure statement to avoid conflicts of interest.

Dated at Rockville, Maryland this 17th day of September, 2014.

For the U.S. Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2014–22621 Filed 9–22–14; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Payment of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request OMB approval of revised collection of information.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is modifying the collection of information under its regulation on Payment of Premiums (OMB control number 1212–0009; expires April 30, 2017) and intends to request that the Office of Management and Budget (OMB) approve the revised collection of information under the Paperwork Reduction Act for three years. This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

DATES: Comments must be submitted by November 24, 2014.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *Email: paperwork.comments@pbgc.gov.*
- *Fax:* 202–326–4224.
- *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

Comments received, including personal information provided, will be posted to *www.pbgc.gov.*

Copies of the collection of information and comments may be obtained without charge by writing to the Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026; visiting the Disclosure Division; faxing a request to 202–326–4042; or calling 202–326–4040 during normal business hours. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The premium payment regulation and the premium instructions (including illustrative forms) for 2014 are available at *www.pbgc.gov.*

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Deputy Assistant General Counsel for Regulatory Affairs, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 4007 of Title IV of the Employee Retirement Income Security Act of 1974 (ERISA) requires pension plans covered under Title IV pension insurance programs to pay premiums to PBGC. All plans covered by Title IV pay a flat-rate per-participant premium. An underfunded single-employer plan also pays a variable-rate premium based on the value of the plan's unfunded vested benefits.

Pursuant to section 4007, PBGC has issued its regulation on Payment of Premiums (29 CFR Part 4007). Under § 4007.3 of the premium payment regulation, the plan administrator of each pension plan covered by Title IV of ERISA is required to file a premium payment and information prescribed by PBGC for each premium payment year. Premium information must be filed electronically using ''My Plan Administration Account'' (''My PAA'') through PBGC's Web site except to the extent PBGC grants an exemption for good cause in appropriate circumstances, in which case the

information must be filed using an approved PBGC form. Under § 4007.10 of the premium payment regulation, plan administrators are required to retain records about premiums and information submitted in premium filings.

Premium filings report (i) the flat-rate premium and related data (all plans), (ii) the variable-rate premium and related data (single-employer plans), and (iii) additional data such as identifying information and miscellaneous plan-related or filing-related data (all plans). PBGC needs this information to identify the plans for which premiums are paid, to verify whether the amounts paid are correct, to help PBGC determine the magnitude of its exposure in the event of plan termination, to help track the creation of new plans and transfer of participants and plan assets and liabilities among plans, and to keep PBGC's insured-plan inventory up to date. That information and the retained records are also needed for audit purposes.

PBGC intends to revise the 2015 filing procedures and instructions to:

- Require reporting of certain undertakings to cash out or annuitize benefits for a specified group of former employees;
- Change certain premium declaration certification procedures, resulting in greater uniformity among the procedures applicable to different filing methods. and
- Offer the option for a plan to provide a telephone number specifically for inclusion in PBGC's Search Plan List on PBGC's Web site, instead of the number provided for PBGC to contact the plan administrator.

PBGC is also intending to update the premium rates and make conforming, clarifying, and editorial changes.

The collection of information under the regulation has been approved through April 30, 2017, by OMB under control number 1212–0009. PBGC intends to request that OMB approve the revised collection of information for three years. 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.

PBGC estimates that it will receive 25,700 premium filings per year from 25,700 plan administrators under this collection of information. PBGC further estimates that the average annual burden of this collection of information is 8,000 hours and $53,200,000.

PBGC is soliciting public comments to—

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodologies and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Issued in Washington, DC, this 17th day of September, 2014.

Judith Starr,

General Counsel, Pension Benefit Guaranty Corporation.

[FR Doc. 2014–22580 Filed 9–22–14; 8:45 am]

BILLING CODE 7709–02–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is an forwarding Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) the practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

1. Title and purpose of information collection: Application for Reimbursement for Hospital Insurance Services in Canada; OMB 3220–0086.

Under section 7(d) of the Railroad Retirement Act (RRA), the RRB administers the Medicare program for persons covered by the railroad retirement system. Payments are provided under section 7(d)4) of the RRA for medical services furnished in Canada to the same extent as for those furnished in the United States. However, payments for the services furnished in Canada are made from the Railroad Retirement Account rather than from the Federal Hospital Insurance Trust Fund, with the payments limited to the amount by which insurance benefits under Medicare exceed the amount payable under Canadian Provincial plans.

Form AA–104, Application for Canadian Hospital Benefits Under Medicare—Part A, is provided by the RRB to a claimant seeking reimbursement for covered hospital services received in Canada. The form obtains information needed to determine the eligibility of the applicant and the amount of any reimbursement due. One response is requested of each respondent. Completion is required to obtain a benefit.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (79 FR 37357 on July 1, 2014) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Application for Reimbursement for Hospital Insurance Services in Canada.

OMB Control Number: 3220–0086.

Form(s) submitted: AA–104.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or Households.

Abstract: The Railroad Retirement Board administers the Medicare program for persons covered by the railroad retirement system. The collection obtains the information needed to determine eligibility and for the amount due for covered hospital services received in Canada.

Changes proposed: The RRB proposes no changes to Form AA–104.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
AA–104	30	10	5

2. Title and purpose of information collection: Availability for Work; OMB 3220–0164. Under Section 1(k) of the Railroad Unemployment Insurance Act, unemployment benefits are not payable for any day for which the claimant is not available for work.

Under Railroad Retirement Board (RRB) regulation 20 CFR 327.5, ''available for work'' is defined as being willing and ready for work. A claimant is ''willing'' to work if willing to accept and perform for hire such work as is reasonably appropriate to his or her employment circumstances. A claimant is ''ready'' for work if he or she (1) is in a position to receive notice of work and is willing to accept and perform such work, and (2) is prepared to be present with the customary equipment at the location of such work within the time usually allotted.

Under RRB regulation 20 CFR 327.15, a claimant may be requested at any time to show, as evidence of willingness to work, that reasonable efforts are being made to obtain work. In order to determine whether a claimant is; (a) available for work, and (b) willing to work, the RRB utilizes Forms UI–38, UI Claimant's Report of Efforts to Find Work, and UI–38s, School Attendance and Availability Questionnaire, to obtain information from the claimant and Form ID–8k, Questionnaire—Reinstatement of Discharged or Suspended Employee, from the union representative. One response is completed by each respondent. Completion of Forms UI–38 and UI–38s is required to obtain or retain benefits. Completion of Form ID–8k is voluntary.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (79 FR 37357 on July 1, 2014) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Availability for Work.

OMB Control Number: 3220–0164.

Form(s) submitted: UI–38, UI–38s, and ID–8k.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or Households, Non-profit institutions.

Abstract: Under Section 1(k) of the Railroad Unemployment Insurance Act, unemployment benefits are not payable for any day in which the claimant is not available for work. The collection obtains information needed by the RRB to determine whether a claimant is willing and ready to work.

Changes proposed: The RRB proposes no changes to the forms in the collection.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
UI–38s:			
In person	42	6	4
By mail	86	10	14
UI–38	2,048	11.5	392
ID–8k	5,668	5	472
Total	7,844	.....	882

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV.*

Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Charles.Mierzwa@RRB.GOV* and to the OMB Desk Officer for the RRB, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

Charles Mierzwa,

Chief of Information Resources Management.

[FR Doc. 2014–22307 Filed 9–22–14; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, Washington, DC 20549–2736.

Extension:

Rule 12g3–2, SEC File No. 270–104, OMB Control No. 3235–0119.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for approval.

Rule 12g3–2 (17 CFR 240.12g3–2) under the Securities Exchange Act of 1934 (the ''Exchange Act'') provides an exemption from Section 12(g) of the Exchange Act (15 U.S.C. 78l(g)) for foreign private issuers. Rule 12g3–2 is designed to provide investors in foreign securities with information about such securities and the foreign issuer. The information filed under Rule 12g3–2 must be filed with the Commission and is publicly available. We estimate that it takes 8.95 hours per response to prepare and is filed by approximately 1,386 respondents. Each respondent files an estimated 12 times submissions pursuant to Rule 12g3–per year for a total of 16,632 respondents. We estimate that 25% of 8.95 hours per response (2.2375 hours per response) to provide the information required under Rule 12g3–2 for a total annual reporting burden of 37,214 hours (2.2375 hours per response × 16,632 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the 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 imposed by 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 comment to Thomas Bayer, Director/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: September 17, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–22548 Filed 9–22–14; 8:45 am]

BILLING CODE 8011–01–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 4, SEC File No. 270–126, OMB Control No. 3235–0287.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection 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.

Under Section 16(a) of the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78a *et seq.*) every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which registered under Section 12 of the Exchange Act (15 U.S.C. 78l), or who is a director or an officer of the issuer of such security (collectively ''insiders''), must file a statement with the Commission reporting their ownership. Form 4 is a statement to disclose changes in an insider's ownership of securities. The information is used for the purpose of disclosing the equity holdings of insiders of reporting companies. Approximately 204,054 insiders file Form 4 annually and it takes approximately 0.5 hours to prepare for a total of 102,027 annual burden hours.

Written comments are invited on: (a) Whether this proposed collections of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collections 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.

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.

Please direct your written comment to Thomas Bayer, Director/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: September 17, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–22545 Filed 9–22–14; 8:45 am]

BILLING CODE 8011–01–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:

Rule 10A–1, SEC File No. 270–425, OMB Control No. 3235–0468.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection 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.

Rule 10A–1 (17 CFR 240.10A–1) implements the reporting requirements in Section 10A of the Exchange Act (15 U.S.C. 78j–1) which was enacted by Congress on December 22, 1995 as part of the Private Securities Litigation Reform Act of 1995, Public Law No. 104–67, 109 Stat 737. Under section 10A and Rule 10A–1 reporting occurs only if a registrant's board of directors receives a report from its auditor that (1) there is an illegal act material to the registrant's financial statements, (2) senior management and the board have not taken timely and appropriate remedial action, and (3) the failure to take such action is reasonably expected to warrant the auditor's modification of the audit report or resignation from the audit engagement. The board of directors must notify the Commission within one business day of receiving such a report. If the board fails to provide that notice, then the auditor, within the next business day, must provide the Commission with a copy of the report that it gave to the board.

Likely respondents are those registrants filing audited financial statements under the Securities Exchange Act of 1934 (15 USC 78a, *et seq.*) and the Investment Company Act of 1940 (15 USC 80a–1, *et seq.*).

It is estimated that Rule 10A–1 results in an aggregate additional reporting burden of 10 hours per year. The estimated average burden hours are solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules or forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will 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 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: September 17, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–22547 Filed 9–22–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, Washington, DC 20549–2736.

Extension:

Form 3, SEC File No. 270–125, OMB Control No. 3235–0104.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection 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.

Under Section 16(a) of the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78a *et seq.*) every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which registered under Section 12 of the Exchange Act (15 U.S.C. 781), or who is a director or an officer of the issuer of such security (collectively ''insiders''), must file a statement with the Commission reporting their ownership. Form 3 (17 CFR 249.103) is an initial statement of beneficial ownership of securities. The information is used for the purpose of disclosing the equity holdings of insiders of reporting companies. Approximately 16,855 insiders file Form 3 annually and it takes approximately 0.5 hours to prepare for a total of 8,428 annual burden hours.

Written comments are invited on: (a) Whether this proposed collections of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by 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 collections 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, Director/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: September 17, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–22544 Filed 9–22–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, Washington, DC 20549–02736.

Extension:

Form 15, SEC File No. 270–170, OMB Control No. 3235–0167.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection 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 15 (17 CFR 249.323) is a certification of termination of a class of security under Section 12(g) or notice of suspension of duty to file reports pursuant to Sections 13 and 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). We estimate that approximately 639 issuers file Form 15 annually and it takes approximately 1.5 hours per response to prepare for a total of 959 annual burden hours.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by 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.

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.

Please direct your written comment to Thomas Bayer, Director/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: September 17, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–22546 Filed 9–22–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–9647; 34–73131; File No. 265–28]

Investor Advisory Committee Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting of Securities and Exchange Commission Dodd-Frank Investor Advisory Committee.

SUMMARY: The Securities and Exchange Commission Investor Advisory Committee, established pursuant to Section 911 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, is providing notice that it will hold a public meeting. The public is invited to submit written statements to the Committee.

DATES: The meeting will be held on Thursday, October 9, 2014 from 10:00 a.m. until 4:00 p.m. (EDT). Written statements should be received on or before October 9, 2014.

ADDRESSES: The meeting will be held in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE., Washington, DC 20549. The meeting will be Webcast on the Commission's Web site at *www.sec.gov.* Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's Internet submission form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email message to *rules-comments@sec.gov.* Please include File No. 265–28 on the subject line; or

Paper Statements

• Send paper statements to Kevin M. O'Neill, Deputy Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. 265–28. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method.

Statements also will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Room 1580, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Marc Sharma, Senior Special Counsel, Office of the Investor Advocate, at (202) 551–3302, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public, except during portions of the meeting reserved for meetings of the Committee's subcommittees. Persons needing special accommodations to take part because of a disability should notify the contact person listed in **FOR FURTHER INFORMATION CONTACT**.

The agenda for the meeting includes: Remarks from Commissioners; a discussion of a recommendation of the Investor as Purchaser subcommittee and Investor Education subcommittee on the definition of accredited investor; a discussion of a recommendation of the Investor as Owner subcommittee on impartiality in the disclosure of preliminary voting results; an update on possible recommendations of the Market Structure subcommittee on the settlement cycle; a briefing by Commission staff on municipal finance bond market transparency; a discussion of issuer adoption of fee-shifting bylaws for intra-corporate litigation (which may include presentations by outside experts and/or Commission staff); and nonpublic subcommittee meetings.

Dated: September 17, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–22551 Filed 9–22–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73132; File No. SR–NASDAQ–2014–092]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Fees for Optional Wireless Connectivity for Co-located Clients

September 17, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 4, 2014, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend fees assessed clients for wireless connectivity that enables clients to receive data from the New York Stock Exchange (''NYSE'') and NASDAQ. Specifically, NASDAQ proposes to amend fees assessed for wireless connectivity for co-located clients in NASDAQ's Carteret data center to receive NYSE, and NYSE ARCA multi-cast market data feeds. It also proposes to amend fees assessed for remote multi-cast ITCH (''MITCH'') Wave Ports for clients co-located at other third-party data centers, through which NASDAQ TotalView ITCH market data will be distributed after delivery to those data centers via wireless network. While the proposed changes to the rules pursuant to this proposal are effective upon filing, the Exchange has designated that they become operative on October 1, 2014. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to amend fees assessed under NASDAQ Rule 7034 for the delivery of third-party market data to co-located clients in NASDAQ's Carteret data center clients via a wireless network using millimeter wave or microwave technology. NASDAQ is also proposing to amend fees assessed under NASDAQ Rule 7015 for remote Multi-cast ITCH Wave Ports for clients co-located at other third-party data centers, through which NASDAQ TotalView ITCH market data will be distributed after delivery to those data centers via wireless network.

Changes to NYSE Wireless Connectivity

NASDAQ offers optional wireless connectivity to clients who had requested such connectivity for other markets' data. NASDAQ uses network vendors to supply wireless connectivity from the Carteret, NJ data center to the data centers of other exchanges.[3] The vendor installs, tests and maintains the necessary communication equipment for this wireless network between the data centers. The wireless connectivity is an optional alternative to fiber optic network connectivity, providing lower latency because the wireless signals travel a straight, unimpeded line and because light waves travel faster through air than through glass (fiber optics). Because wireless transmission of such data requires an unimpeded line of sight between Carteret and the data center of the market to which it is connecting, NASDAQ and its vendors incur costs associated with maintaining hardware and leasing towers on which its microwave dishes and the associated hardware are mounted, which generally increase as distance between data centers increase.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASDAQ OMX acts as re-distributor of these third-party market data feeds, capturing the data at the originating data centers and transporting the data to the Carteret data center.

[4] Because direct line of sight between Carteret and the data centers of other exchanges is not possible, NASDAQ's vendors leases as many towers and associated equipment as needed to ensure an

NASDAQ originally planned to create wireless connections to a data center in Newark used by NYSE as a SFTI Network Point of Presence, which is approximately 15 miles from NASDAQ's Carteret data center. In 2013, NYSE began to allow wireless vendors and telco vendors to connect directly to its data center in Mahwah, NJ,[5] which is approximately 40 miles from Carteret. Because the wireless data feeds are designed to offer high-speed and low latency,[6] NASDAQ determined to direct its wireless vendors to connect to the Mahwah data center instead of the Newark SFTI Point of Presence. As a consequence, NASDAQ is proposing to increase the fees assessed under Rules 7015(d) [sic] and 7034(b) relating to connectivity to data received wirelessly to and from Mahwah, which will help offset greater costs incurred in leasing towers, and purchasing and maintaining wireless equipment to cover the increased distance as well as the higher costs to house equipment and connections within the Mahwah data center.

Wireless Connectivity in Carteret

Under Rule 7034(b), clients are assessed a $2,500 installation fee (a non-recurring charge) and a monthly recurring charge (''MRC'') that varies depending upon the feed. The MRC for the NYSE multi-cast equities data feed, which includes NYSE ArcaBook Highspeed and NYSE OpenBook (Aggregated or Ultra), is $10,000; the MRC for BATS Multicast PITCH, which includes BZX and BYX, is $7,500; and the MRC for Direct Edge Depth of Book multi-cast feed, which includes EDGA and EDGX, is $7,500. The rates are higher for the NYSE feeds because the two feeds are larger, and take up more bandwidth than the BATS and Direct Edge feeds.

Recently, NYSE announced that it is phasing out its ArcaBook High Speed data feed,[7] leaving the Arca Integrated data feed, which is a low-latency alternative to ArcaBook High Speed data,[8] as the primary and popular data feed for Arca. Arca Integrated data feed has greater data bandwidth requirements than the ArcaBook High Speed data feed and, as a consequence, NASDAQ can no longer offer both the NYSE and Arca feeds through a single wireless connection. Accordingly, NASDAQ is proposing to offer separately NYSE Open Book[9] and Arca Integrated data feeds.

NASDAQ is also proposing to increase the fee assessed for wireless connectivity to the NYSE and Arca feeds. As noted above, NASDAQ currently assesses a one-time installation fee of $2,500, and an MRC of $10,000 for wireless connectivity to the NYSE and Arca data feeds under Rule 7034(d) [sic]. NASDAQ is proposing to assess an installation fee of $5,000 and a monthly subscription fee of $12,500. NASDAQ notes that the proposed new fees are greater than the fee currently assessed for the Open Book Ultra and ArcaBook High Speed data feeds due to the greater bandwidth requirements and increased costs associated with connectivity to the Mahwah data center.

Remote Multi-cast ITCH (MITCH) Wave Ports

NASDAQ is also proposing to increase the fees currently assessed for MITCH Wave Ports for clients connecting to the NYSE Mahwah data center. NASDAQ currently assesses an installation charge for the remote port, at each of the data center locations, of $2,500 for installation, and $7,500 as an MRC.[10] Each of the data centers that a client may subscribe to is approximately the same distance from the Carteret data center, including NYSE's Newark STFI Point of Presence. As discussed above, NASDAQ will be providing a direct connection to NYSE's data center in Mahwah, which is significantly farther from Carteret. NASDAQ incurs higher costs for housing its equipment at Mahwah, including higher fees for power, cabinets and connections. Moreover and as noted above, the Exchange and its vendors incur higher costs in leasing towers and equipment to connect Carteret to Mahwah. As a consequence, NASDAQ is proposing to increase the one-time installation charge to $5,000, and the MRC to $12,500.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[11] in general, and with Sections 6(b)(4) and (b)(5) of the Act,[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is 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, and, in general to protect investors and the public interest.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading activities of those members who believe that co-location enhances the efficiency of their trading. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of such members. If a particular exchange charges excessive fees for co-location services, affected members will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including co-locating with a different exchange, placing their servers in a physically proximate location outside the exchange's data center, or pursuing trading strategies not dependent upon co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also revenues associated with the execution of orders routed to it by affected members.

Moreover, the Exchange believes the proposed increased fees are reasonable because they are based on the Exchange's increased costs incurred in connecting to Mahwah. As discussed, the greater distance between Carteret and Mahwah results in greater costs incurred by the Exchange and its vendors, and the Exchange is assessed higher charges for housing its equipment at Mahwah as compared to Newark. The proposed fees allow the Exchange to recoup these costs and make a profit, while providing clients the ability to reduce latency in the transmission of data by connecting directly to NYSE's data center wirelessly.

The Exchange believes the proposed increased fees are equitably allocated in that all clients that voluntarily select connect to, and receive data from, NYSE through these services are charged the same amount for the same services. Although the proposed fees are higher than the fees charged for connectivity to other exchanges' data centers, they are reflective of the increased costs

unbroken line of sight between individual towers, repeating the signal until it arrives at its destination.

[5] *See http://www1.nyse.com/press/1337855269042.html.*

[6] Wireless connectivity is an optional alternative to higher latency fiber optic network connectivity.

[7] *See http://www.nyxdata.com/nysedata/default.aspx?tabid=993&id=2338.*

[8] NYSE describes the Arca Integrated feed as a real time data feed that provides a ''unified view of events, in sequence as they appear on the NYSE Arca matching engine.'' *See http://www.nyxdata.com/page/1084.*

[9] The Exchange notes that NYSE has renamed its Ultrabook data feed.

[10] Clients opting to pay for the remote MITCH Wave Ports will continue to be fee liable for the applicable market data fees as described in NASDAQ Rules 7019, 7023, and 7026.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) and (5).

associated with connecting to the Mahwah data center. Accordingly, the increased fees are allocated equitably on those that receive the benefit of the connectivity.

The Exchange's proposal is also consistent with the requirement of Section 6(b)(5) of the Act that Exchange rules be designed to promote just and equitable principles of trade to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between clients, issuers, brokers, or dealers. The proposal is consistent with these requirements because it provides an optional connectivity, which promotes low-latency transfer of data to market participants. As is true of all co-location services, all co-located clients have the option to select this voluntary connectivity option, and there is no differentiation among clients with regard to the fees charged for the wireless connectivity to, and wirelessly-received data from Mahwah.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, this proposal will promote competition for distribution of market data by offering an optional direct connection to the NYSE data center, which will improve the latency of the connection currently available through NYSE's STFI Point of Presence in Newark. As discussed above, the Exchange believes that fees for co-location services, including those proposed for microwave connectivity, are constrained by the robust competition for order flow among exchanges and non-exchange markets, because co-location exists to advance that competition. Further, excessive fees for co-location services, including for wireless technology, would serve to impair an exchange's ability to compete for order flow rather than burdening competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[13] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2014–092 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2014–092. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2014–092, and should be submitted on or before October 14, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–22542 Filed 9–22–14; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73126; File No. SR–Phlx–2014–60]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule Under Section VIII With Respect To Execution and Routing of Orders in Securities Priced at $1 or More Per Share

September 17, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 5, 2014, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule under Section VIII, entitled ''NASDAQ OMX PSX FEES,'' with respect to execution and routing of orders in securities priced at $1 or more per share. The Exchange implemented the fees on September 2, 2014.[3]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend certain fees for order execution on the NASDAQ OMX PSX System (''PSX'') by member organizations for securities traded at $1 or more per share. Chapter VIII(a)(1) of the PSX pricing schedule concerns fees assessed for execution of quotes/orders on PSX in securities listed on the Nasdaq Stock Market (''Nasdaq''), securities listed on the New York Stock Exchange (''NYSE'') and securities listed on exchanges other than Nasdaq and NYSE. Under the rule, the Exchange assesses two separate fees of $0.0026 per share executed for execution of securities that are eligible for routing, and for execution of securities that are not eligible for routing. The Exchange is proposing to eliminate the current distinction made between orders designated as eligible for routing and those that are not, and rather distinguish the charges assessed based on the venue on which the security is listed. Specifically, the Exchange is proposing to assess a charge of $0.0024 per share executed in securities listed on NYSE, $0.0024 per share executed in securities listed on an exchange other than Nasdaq or NYSE, and $0.0026 per share executed in securities listed on Nasdaq.

The Exchange notes that it historically distinguished the fees it assessed under Chapter VIII(a) by the listing venue of the security executed; however, in an effort to simplify the fee schedule, the Exchange recently consolidated three sections of the rule concerning each of the three types of securities into a single section under Chapter VIII(a)(1) that applies to all three types of securities.[4] A consequence of the proposed rule change will be that charges assessed for executions in securities listed on NYSE and securities listed on an exchange other than Nasdaq or NYSE will decrease, without regard to their ability to be routed, and charges assessed for executions in securities listed on Nasdaq will remain unchanged, also without regard to their ability to be routed.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Sections 6(b)(4) and (b)(5) of the Act[6] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities, and it does not unfairly discriminate between customers, issuers, brokers or dealers. The proposed changes are reasonable because they reflect a modest decrease in the charges assessed for execution of securities in NYSE-listed and securities listed on an exchange other than Nasdaq or NYSE, and no change in the charge assessed for the execution of orders in securities designated as not eligible for routing in Nasdaq-listed securities. The proposed changes are consistent with an equitable allocation of fees and are not unfairly discriminatory because they provide incentive to market participants to improve the market in the applicable securities by offering a reduced rate than is currently offered for the execution of securities on PSX. The Exchange makes distinctions in fees and charges based on desire to provide certain incentives to market participants to further provide liquidity to the market weighed against the costs the Exchange incurs in providing such incentives. In the present case, the Exchange is providing incentive to market participants to improve the market in NYSE-listed and securities listed on an exchange other than Nasdaq or NYSE, which is not as robust as the liquidity currently available in Nasdaq-listed securities. Because the market in Nasdaq-listed securities is robust on PSX, the Exchange is maintaining the current charge assessed for executions in Nasdaq-listed securities. Moreover, under the proposed change a member that receives an execution on PSX in a security listed on a venue noted in the amended rule will be assessed the same charge that all other members are assessed for the execution of a security listed on the same venue. For these reasons, the Exchange believes that the proposal is an equitable allocation of fees and is not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as amended.[7] The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, the reduced charges are intended to provide

[3] The proposed rule change was originally filed on August 28, 2014 (Phlx–2014–58). This filing makes a technical correction to the original filing, which was withdrawn concurrently with the submission of this filing.

[4] The Exchange noted at the time that the three sections were largely identical in terms of the categories for which charges are assessed and credits given. Notwithstanding, the Exchange must, from time to time, make distinctions in the fees assessed and credits provided based on type of security traded and the market-improving behavior sought to incentivize. *See* Securities Exchange Act Release No. 72572 (July 9, 2014), 79 FR 41327 (July 15, 2014)(SR–Phlx–2014–43).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4) and (5).

[7] 15 U.S.C. 78f(b)(8).

incentive to market participants to add liquidity to the Exchange in securities listed on NYSE or exchanges other than Nasdaq or NYSE, while maintaining the current charge applied to Nasdaq-listed securities, which is reflective of the robust liquidity in Nasdaq-listed securities currently on the market. Because there are numerous competitive alternatives to PSX, it is possible that the changes will not have the desired effect and, although the Exchange believes unlikely in the current proposal, the Exchange could lose market share as a result of the changes to the extent that they are unattractive to market participants. Accordingly, the Exchange does not believe the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[8] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2014–60 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–Phlx–2014–60. 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–Phlx–2014–60 and should be submitted on or before October 14, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–22540 Filed 9–22–14; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73128; File No. SR–ICEEU–2014–14]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to ICE Clear Europe Delivery Procedures

September 17, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 2, 2014, ICE Clear Europe Limited (''ICE Clear Europe'') 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 primarily by ICE Clear Europe. ICE Clear Europe filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(4)(ii)[4] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the change is to modify certain aspects of the ICE Clear Europe Delivery Procedures in connection with the settlement of certain European energy futures contracts that are currently cleared by ICE Clear Europe, namely: ICE UK Base Electricity Futures Contract, ICE UK Peak Electricity Futures Contract, ICE UK Natural Gas Futures, ICE Endex TTF Natural Gas Base Load Futures, ICE Endex TTF Natural Gas WDNW Futures, ICE Endex German Gaspool Natural Gas Futures, ICE Endex German NCG Natural Gas Futures, ICE Endex Dutch Power Base Load Futures, ICE Endex Dutch Power Base Load Week Futures, ICE Endex Dutch Power Peak Load (7–23) Futures, ICE Endex Dutch Power Peak Load (8–20) Futures, ICE Endex Belgian Power Base Load Futures and ICE Endex German Power Futures (the ''Relevant Futures Contracts'').

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(4)(ii).

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the rule amendments is to modify certain aspects of the ICE Clear Europe Delivery Procedures in connection with the settlement of the Relevant Futures Contracts. As set forth below, substantially the same changes are made for each Relevant Futures Contract. The changes are made in each of Parts C through J of the Delivery Procedures, which are the subchapters relating to the Relevant Futures Contracts. ICE Clear Europe does not otherwise propose to amend its clearing rules or procedures in connection with the Relevant Futures Contracts.

The amendments are generally designed to provide for daily settlement of payments owed with respect to deliveries made, and to make related changes in the invoicing process. The settlement timetable in section 5 of each relevant Part has been revised so that payment takes place by 9:00 a.m. London time (or 10:00 a.m. Central European Time, as applicable) on the business day following the Delivery Day (''D+1'') for deliveries made on that Delivery Day (instead of the 19th business day for the natural gas contracts and the 10th business day for the power contracts following the end of the month of delivery, as under the existing Delivery Procedures). Thus, Buyers make contract payment via their nominated accounts, and Sellers receive payment, in respect of deliveries for the preceding Delivery Day. In addition, as modified, on D+1 Seller's Security for the actual delivered amount is released and ICE Clear Europe releases the 'Buyer's Default Top-up' portion of the Buyer's Security on confirmed deliveries. Procedures for dealing with failed deliveries are not changed.

In each relevant Part, the amendments adopt a new definition of ''Invoice Period,'' which is defined as the period beginning at the start of the day on which the last invoice was issued, up to the end of the day prior to the date of the current invoice and includes all payments made from the Buyer to the Seller in respect of completed deliveries. The relevant Parts have also been modified to provide that the Invoice and Account Sale Report, which gives details of all deliveries made during the Invoice Period, will available made by 9:00 a.m. London time (or 10:00 a.m. Central European Time, as applicable) on the day following the Invoice Period.

In addition, conforming changes are made in certain Parts to use the defined term ''Exchange Delivery Settlement Price'' and its abbreviation ''EDSP'' instead of ''Market Delivery Settlement Price'' and ''MDSP,'' respectively.

In Part J of the Delivery Procedures, text relating to the Clearing House's ability to retain Buyer's Security and/or Seller's Security in the case of a delivery failure, which was inadvertently omitted from a prior filing, has been reinserted. The revised provision is consistent with the treatment of delivery failures under the other Parts of the Delivery Procedures.

(2) Statutory Basis

ICE Clear Europe believes that the changes described herein are consistent with the requirements of Section 17A of the Act [5] and the regulations thereunder applicable to it, including the standards under Rule 17Ad–22,[6] and are consistent with the prompt and accurate clearance of and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts and transactions, the safeguarding of securities and funds in the custody or control of ICE Clear Europe or for which it is responsible and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[7] The amended Delivery Procedures, together with the existing ICE Clear Europe rules, provide the mechanism for physical settlement of the Relevant Futures Contracts, specify the rights, obligations and duties of the clearing members and the Clearing House in connection therewith, and permit the Clearing House to manage the delivery risk with respect to such contracts. In particular, the amendments to the Delivery Procedures revise the timing of payment to be more closely aligned with deliveries made under the Relevant Futures Contracts. ICE Clear Europe thus believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and regulations thereunder applicable to it, including Rule 17Ad–22(d)(15).

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed changes to the rules would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the Act. ICE Clear Europe is adopting the amendments to the Delivery Procedures principally in order to revise the timing of payment to be more closely aligned with deliveries made under the Relevant Futures Contracts. ICE Clear Europe does not believe the adoption of these changes would adversely affect access to clearing for clearing members or their customers, otherwise adversely affect competition in clearing services, or materially affect the cost of clearing for clearing members or their customers.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed changes to the rules have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act,[8] and Rule 19b–4(f)(2) [9] thereunder because it effects a change in an existing service of a registered clearing agency that primarily affects the clearing operations of the clearing agency with respect to products that are not securities, including futures that are not security futures, swaps that are not security-based swaps or mixed swaps, and forwards that are not security forwards, and does not significantly affect any securities clearing operations of the clearing agency or any rights or obligations of the clearing agency with respect to securities clearing or persons using such securities-clearing service. 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

[5] 15 U.S.C. 78q–1.

[6] 17 CFR 240.17Ad–22.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

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–ICEEU–2014–14 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–ICEEU–2014–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's Web site at *https://www.theice.com/clear-europe/regulation.*

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–ICEEU–2014–14 and should be submitted on or before October 14, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–22541 Filed 9–22–14; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Delegations of Authority: Delegation of Authority No. 12–G, Revision 1

AGENCY: Small Business Administration.

ACTION: Notice of Delegations of Authority.

SUMMARY: This document provides the public notice of a revision to Delegations of Authority No. 12–G (70 FR 21262, April 25, 2005), which delegated authority for lender oversight and enforcement activities by the Administrator of the Small Business Administration (SBA) to the Associate Administrator for the Office of Lender Oversight (AA/OLO), the Lender Oversight Committee, and the Associate Deputy Administrator for Capital Access (ADA/CA). By this revision, the Administrator provides the public notice of a change in the name of Office of Lender Oversight to the ''Office of Credit Risk Management.'' It also provides notice of changes in the position titles of the AA/OLO to the ''Director, Office of Credit Risk Management'' (D/OCRM) and the ADA/CA to the ''Associate Administrator for Capital Access'' (AA/CA). Through this document, the Administrator is delegating additional authority in lender oversight and enforcement matters to the D/OCRM, the Lender Oversight Committee, and the AA/CA. The additional delegations to the D/OCRM include, but are not limited to, the authority to renew certain delegated lending authorities accorded to 7(a) Lenders and Certified Development Companies, authorities over SBA Supervised Lender reporting, and the authority to oversee Agent activity in the business loan programs. The additional authorities delegated to the Lender Oversight Committee effect a transfer of certain supervision and enforcement authorities from the Director, Office of Financial Assistance to the Lender Oversight Committee. The additional authorities delegated to the AA/CA relate to Small Business Lending Company capital. Finally, this revision incorporates a few updates and clarifications. These Delegations of Authority No. 12–G, Revision 1 supersede Delegations of Authority No. 12–G.

FOR FURTHER INFORMATION CONTACT: Brent Ciurlino, Director, Office of Credit Risk Management, or Diane K. Wright, Attorney Advisor, Office of General Counsel, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416, telephone numbers: (202) 205–3049 or (202) 205–6642, respectively; facsimile number: (202) 205–6831; and electronic mail: *brent.ciurlino@sba.gov* or *diane.wright@sba.gov,* respectively.

SUPPLEMENTARY INFORMATION: This publication provides the public notice of a revision to the Administrator's Delegations of Authority with respect to SBA's lender oversight and enforcement activities. Specifically, this revision provides the public notice of a change in the name of the office from the ''Office of Lender Oversight'' to the ''Office of Credit Risk Management.'' This document also provides the public notice of a change in the position titles from ''Associate Administrator for the Office of Lender Oversight'' to ''Director, Office of Credit Risk Management'' (D/OCRM) and from the ''Associate Deputy Administrator for Capital Access'' to the ''Associate Administrator for Capital Access'' (AA/CA).

In addition, the revision grants further authority in lender oversight and enforcement matters to the D/OCRM, the Lender Oversight Committee, and the AA/CA. This revision delegates to the D/OCRM the authority to renew delegated lending authority accorded to 7(a) Lenders in the Preferred Lenders Program (PLP), SBA Express Program, and Export Express Program and to renew delegated lending authority accorded to Certified Development Companies (CDCs) in the Accredited Lenders Program (ALP) and the Premier Certified Lenders Program (PCLP). The Director, Office of Financial Assistance (D/OFA) will make the delegated lending authority determination on initial applications (Nominations). This revision also delegates to the D/OCRM the authority over participation in the Community Advantage Program, currently a pilot program. The document further delegates to the D/OCRM authority over SBA Supervised Lender reporting. In addition, it eliminates the Risk Rating ''4'' and ''5'' delineation for the D/OCRM and the D/OFA in their respective responsibilities for dealings with 7(a) Lenders and CDCs (collectively, SBA Lenders), and Intermediaries in the Microloan Program and Intermediaries in the ILP

Program (collectively, Intermediaries). More specifically, the D/OCRM will have responsibility for dealings with all SBA Lenders and Intermediaries in matters of oversight/monitoring, supervision, and enforcement, as applicable. Other dealings with SBA Lenders, including but not limited to approval of 7(a) Lender financing and other conveyances (e.g., securitizations, sales, sales of participations, and pledges) and approvals of SBA Supervised Lender applications and changes of ownership and control, will rest with the D/OFA regardless of Risk Rating. The D/OFA will make certain significant decisions (e.g., other conveyances and SBA Supervised Lender applications and changes of ownership and control) in consultation with the D/OCRM. The Administrator is also delegating to the D/OCRM oversight of Agent activity in SBA's business loan programs and the authority to suspend or revoke the privilege of these Agents to conduct business with SBA under 13 C.F.R. Part 103.

The revision also expands certain authorities of the Lender Oversight Committee. Specifically, the Lender Oversight Committee's authority to approve certain enforcement actions against lenders is no longer limited to lenders Risk Rated ''4'' and ''5''. With this Delegation, the Lender Oversight Committee has authority to approve such enforcement actions regardless of an SBA Lender's or Intermediary's Risk Rating. By this revision, the Administrator also delegates to the AA/CA additional authorities, including authorities involving SBA Supervised Lender capital regulation (e.g., the authority to set SBLC capital standards). These changes extend the formal migration of lender oversight and enforcement responsibilities from the D/OFA to the D/OCRM, the Lender Oversight Committee, and the AA/CA. Finally, the revision incorporates a few clarifications and updates (e.g., inclusion of risk-based reviews/examinations as an oversight tool in paragraph I.A.2.b. below, additional supervision and enforcement authorities over Intermediaries, and D/OCRM authority to implement certain portfolio transfers). Delegation of Authority No. 12–G Revision 1 reads as follows:

Delegation of Authority No. 12–G, Revision 1.

I. The Administrator of the SBA, pursuant to the authority vested in her by the Small Business Act, 15 U.S.C. 631 et. seq., as amended, and the Small Business Investment Act of 1958, 15 U.S.C. 661 et. seq., as amended, hereby delegates the following authorities:

A. To the Director, Office of Credit Risk Management (D/OCRM):

1. Loan Program Delegated Authority Renewals and Community Advantage Program Participation. To approve or decline: (i) Renewal of 7(a) Lender participation in the Preferred Lenders (PLP) [1], SBA Express, Export Express, and PLP–Export Working Capital (PLP–EWCP) programs; (ii) renewal of Certified Development Company (CDC) participation in the Accredited Lenders Program (ALP) and Premier Certified Lenders Program (PCLP); (iii) renewal of 7(a) Lender or CDC (together, SBA Lender) participation in other delegated authority programs established in the future, unless otherwise provided; and (iv) a lender's participation in the Community Advantage Program, regardless of the lender's Risk Rating and as more specifically set forth in (a) through (g) below. If a renewal request is denied or renewal authority expires and an SBA Lender later reapplies, the D/OCRM may approve or deny the request. If an SBA Lender requests additional delegated authority with its renewal request, the D/OCRM may also approve or deny the additional authority request. The D/OCRM's determination is the final Agency decision.

a. PLP.

To approve or decline the renewal of a 7(a) Lender's participation in PLP [2] and PLP–EWCP.

b. SBA Express Program.

To approve or decline the renewal of a 7(a) Lender's participation in SBA Express.

c. Export Express Program.

To approve or decline the renewal of a 7(a) Lender's participation in Export Express.

d. ALP.

To approve or decline the renewal of a CDC's participation in ALP.

e. PCLP.

To approve or decline the renewal of a CDC's participation in PCLP.

f. Other Delegated Lending Authority Programs.

To approve or decline the renewal of an SBA Lender's participation in other delegated lending authority programs hereafter established unless otherwise provided.

g. Community Advantage Program.

(i) To approve or decline a lender's application for participation in Community Advantage, including delegated lending authority and/or the authority to sell Community Advantage loans on the Secondary Market.

(ii) To approve or decline the renewal of a lender's participation in Community Advantage, including delegated lending authority and/or the authority to sell Community Advantage loans on the Secondary Market.

2. Lender Oversight Activities.

a. To direct and coordinate SBA's lender oversight activities.

b. To review, examine, monitor, and assess the risks to SBA loan programs of SBA Lenders (including but not limited to: Small Business Lending Companies (SBLCs); Non-Federally Regulated Lenders (as defined in 13 CFR 120.10, NFRLs); other 7(a) Lenders; and CDCs) and Intermediaries in the Microloan Program and Intermediaries in the ILP Program (collectively, Intermediaries) (the latter two programs in conjunction with SBA's Office of Economic Opportunity), using a variety of oversight tools, including but not limited to: Risk-based reviews/exams; ongoing monitoring and evaluation; Risk Ratings and Assessments; and increased supervision, where applicable.

c. To assign Risk Ratings and Assessments.

d. To conduct increased supervision.

e. To oversee SBA Supervised Lender reporting (including, but not limited to, receiving: SBA Supervised Lender reports; capital impairment notices; copies of documents related to transfer of ownership or control filed with another authority; and requests for SBA Supervised Lender reporting waivers) and to make the final Agency decision to waive any reporting requirements for SBA Supervised Lenders.

f. To assume responsibility for the follow-up and dealings with SBA Lenders and Intermediaries regardless of Risk Rating, in matters involving lender oversight, supervision and enforcement.

g. To head and direct the activities of the Bureau of PCLP Oversight.

h. To oversee Agent activity in SBA's business loan programs. For purposes of these delegations, ''Agent'' refers to an Agent under 13 CFR 103.1(a) of an applicant or participant in SBA's business loan programs.

i. To take all other actions relating to lender oversight activities and supervision that are not otherwise delegated to others.

3. Enforcement Actions.

a. To make recommendations to the Lender Oversight Committee relating to formal enforcement actions under 13 CFR 120.1500–120.1540 against SBA Lenders and Intermediaries.

b. To take formal enforcement actions under 13 CFR 120.1500–120.1540

[1] The D/OCRM's authority to renew PLP authority will also include renewal of CLP authority if CLP authority is expiring at the same time.

[2] This includes authority to renew CLP that is expiring with renewal of PLP.

against SBA Lenders and Intermediaries as approved by the Lender Oversight Committee and, if necessary, as approved by the Administrator or his/her authorized delegatee, with the concurrence of the Office of General Counsel.

c. To approve and take informal enforcement actions against SBA Lenders and Intermediaries.

d. To take all other actions in connection with lender oversight enforcement for SBA Lenders and Intermediaries that are not otherwise delegated to others (including, but not limited to, receiving written objections to proposed enforcement actions or immediate suspensions, requests for clarification of the notice of actions, and requests for additional time to respond to the notice of actions and making the final Agency decision on requests for clarification and additional time to respond).

e. To approve or disapprove suspension or revocation of the privilege of any Agent in SBA's business loan programs to conduct business with SBA under 13 CFR part 103 or take other Agent action as available under law.

f. To take other actions in connection with lender oversight enforcement as permitted by SBA Loan Program Requirements or other law that are not otherwise delegated herein.

4. Policy, Program, and Portfolio Analysis.

a. To provide the Office of Capital Access (OCA) and appropriate program management offices with independent policy, program and portfolio analysis and recommendations for SBA's loan programs and portfolios, generally developed through lender oversight and enforcement activities and Office of Performance and Systems Management reports.

b. To conduct quality assurance activities at SBA loan operation centers.

c. To monitor changes in accounting, banking, and financial industries relative to financial institution oversight and recommend appropriate modification of SBA oversight policies.

d. To manage the content of SBA's Loan and Lender Monitoring System.

5. To implement portfolio and servicing transfers in conjunction with increased supervision or enforcement activity. This includes, but is not limited to, determining transferee.

6. To serve as the debarring and suspending official for SBA's financial assistance programs.

7. To take all other actions in connection with matters related to SBA Lender, Intermediary, and Agent oversight, supervision and enforcement and SBA's Credit Risk Management Program and to take any and all action necessary and proper to execute or implement the authority granted herein.

B. To the Lender Oversight Committee:

1. To review reports on lender oversight activities.

2. To review formal enforcement action recommendations of the D/OCRM for SBA Lenders, Microloan Intermediaries and ILP Intermediaries and

a. With respect to formal enforcement actions under Sections 23(d) (revocation or suspension of loan authority of SBLC/NFRL) and 23(e) (Cease and Desist Order issued to SBLC/NFRL) of the Small Business Act, to vote to recommend such action or any other action under this paragraph to the Administrator or his/her authorized delegatee or to vote to not recommend action under this paragraph to the Administrator or his/her delegatee, and

b. With respect to all other formal enforcement actions not otherwise delegated to others herein, to vote to approve, disapprove, or modify the action.

3. To review OCRM's budget, staffing, and operating plans.

4. To review in an advisory capacity any lender oversight, portfolio risk management, or program integrity matters brought by the D/OCRM at his/her discretion on a case by case basis.

5. To take such other actions and perform such other functions as may be formally adopted in SBA Loan Program Requirements or otherwise.

6. The Lender Oversight Committee will consist of SBA's Chief Operating Officer or Deputy Chief Operating Officer (Chairperson and voting member); Chief Financial Officer or Deputy Chief Financial Officer (voting member); AA/CA or Deputy Associate Administrator/CA (voting member); the D/OCRM (non-voting recommending member); Director, Office of Financial Assistance (non-voting advisory member); Director, Office of Economic Opportunity (non-voting advisory member); Director, Office of Financial Program Operations (non-voting advisory member); Director, Office of Performance and Systems Management (non-voting advisory member); Associate Administrator, Office of Field Operations (non-voting advisory member); Associate Administrator, Office of International Trade (non-voting advisory member); and General Counsel (non-voting advisor).

C. To the Associate Administrator for Capital Access (AA/CA): In addition to the powers and authorities already delegated to the AA/CA:

1. SBA Supervised Lender Capital.

a. To set capital standards for SBLCs in general.

b. To set higher individual minimum capital requirements for an SBLC.

c. To issue a capital directive to an SBLC.

d. To make the final Agency decision on waiver of the loan guaranty presentment prohibition for an SBA Supervised Lender that is capitally impaired, in consultation with the Lender Oversight Committee.

II. The authorities delegated to the D/OCRM, except the authority to change assigned ratings, may be redelegated.

III. The authorities delegated to the D/OCRM may be exercised by any SBA employee officially designated as Acting in the position.

IV. Other than the authority delegated to the Lender Oversight Committee in Paragraph I.B.2.b. (enforcement actions), the authorities delegated herein to the Lender Oversight Committee may not be redelegated. With regard to the authority delegated in Paragraph I.B.2.b., the Lender Oversight Committee may redelegate authority to the D/OCRM or a subcommittee to approve, disapprove, or modify certain enforcement actions (e.g., Agreement or Memorandum of Understanding between SBA and lender).

V. The authorities delegated to each Lender Oversight Committee member or advisor may be exercised by any SBA employee officially designated as Acting in the position.

VI. The authorities delegated to the AA/CA in Paragraph I.C.1. except the authority in Subparagraph I.C.1.a. (to set SBLC capital standards), cannot be redelegated.

VII. The authorities delegated herein to the AA/CA may be exercised by any SBA employee officially designated as Acting in the position.

VIII. The authorities delegated herein can only be revoked or amended by the Administrator and in writing.

IX. All previous delegations that are contrary to these delegations are hereby revoked.

Authority: 5 U.S.C. 302; 15 U.S.C. 634; 15 U.S.C. 636; 15 U.S.C. 642; 15 U.S.C. 650; 15 U.S.C. 687(f); 15 U.S.C. 696(3)(A); 15 U.S.C. 697; Pub. L. 104–208, Division D, Title I, Section 103(h) (September 30, 1996); and 2 CFR 2700 et. seq.

Dated: September 16, 2014.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2014–22537 Filed 9–22–14; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 8878]

Culturally Significant Objects Imported for Exhibition Determinations: ''Donatello, Michelangelo, Cellini: Sculptors' Drawings From Renaissance Italy''

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, and 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 ''Donatello, Michelangelo, Cellini: Sculptors' Drawings from Renaissance Italy,'' 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 Isabella Stewart Gardner Museum, Boston, Massachusetts, from on or about October 23, 2014, until on or about January 19, 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 imported objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: September 17, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–22612 Filed 9–22–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 8877]

Additional Designation of Eyvaz Technic Manufacturing Company, The Exploration and Nuclear Raw Materials Production Company, Maro Sanat Company, Navid Composite Material Company, and Negin Parto Khavar Pursuant to Executive Order 13382

AGENCY: Department of State.

ACTION: Designation of five Iranian entities pursuant to Executive Order (E.O.) 13382.

SUMMARY: Pursuant to the authority in section 1(ii) of Executive Order 13382, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters'', the State Department, in consultation with the Secretary of the Treasury and the Attorney General, has determined that Eyvaz Technic Manufacturing Company, The Exploration and Nuclear Raw Materials Production Company, Maro Sanat Company, Navid Composite Material Company, and Negin Parto Khavar have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern.

DATES: The designation by the Under Secretary of State for Arms Control and International Security of the entity identified in this notice pursuant to Executive Order 13382 is effective on December 11, 2013.

FOR FURTHER INFORMATION CONTACT: Director, Office of Counterproliferation Initiatives, Bureau of International Security and Nonproliferation, Department of State, Washington, DC 20520, tel.: 202–647–5193.

SUPPLEMENTARY INFORMATION:

Background

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 CFR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 30, 2005. In the Order the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery, including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

Information on the additional designees is as follows:

Eyvaz Technic Manufacturing Company

AKA: Eyvaz Technic
AKA: Eyvaz Technik
AKA: Eyvaz Technic Industrial Company Ltd.
Address: Sharia'ati St., Shahid Hamid Sadik Alley, Building 3, Number 3, Tehran, Iran

The Exploration and Nuclear Raw Materials Production Company

AKA: EMKA
AKA: EMKA Company
Address: Tehran, Iran

Maro Sanat Company

AKA: Maro Sanat Engineering

AKA: Marou Sanat Engineering Company
AKA: Mohandesi Tarh Va Toseh Maro Sanat Company
AKA: Maro Sanat Development and Design Engineering Company
Address: North Dr. Moftah Street, Zahra Street, Placard 9, Ground floor, Tehran, Iran

Navid Composite Material Company

AKA: Navid Composite
Address: No. 3, Alley 23, 16th Janbazan Street, North Kargar Avenue, Tehran, Iran

Negin Parto Khavar

AKA: Negin Parto Khavar Co. Ltd.
AKA: Negin Parto
AKA: Payan Avaran Omran
AKA: Ertebate Eghtessade Monir
Address: Fatmi Gharabi Street, between Sindokht and Etemad Zadeh, Block 307, Floor 3, Unit 7, Tehran, Iran. Zip Code: 1411816191
Address: Unit 7, No. 279 West Fatemi Street, Tehran, Iran. Zip Code: 1411816191

Dated: December 12, 2013.

Rose Gottemoeller,

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

EDITORIAL NOTE: This document was received for publication by the Office of Federal Register on September 18, 2014.

[FR Doc. 2014–22613 Filed 9–22–14; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Public Notice: 8876]

Additional Designation of Jahan Tech Rooyan Pars, Mandegar Baspar Kimiya Company, Organization of Defensive Innovation and Research, and Nuclear Science and Technology Research Institute Pursuant to Executive Order 13382

AGENCY: Department of State.

ACTION: Designation of Four Iranian Entities Pursuant to Executive Order (E.O.) 13382.

SUMMARY: Pursuant to the authority in section 1(ii) of Executive Order 13382, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters'', the State Department, in consultation with the Secretary of the Treasury and the Attorney General, has determined that Jahan Tech Rooyan Pars, Mandegar Baspar Kimiya Company, Organization of Defensive Innovation and Research, and Nuclear Science and Technology Research Institute have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern.

DATES: The designation by the Under Secretary of State for Arms Control and International Security of the entity identified in this notice pursuant to Executive Order 13382 is effective on August 29, 2014.

FOR FURTHER INFORMATION CONTACT: Director, Office of Counterproliferation Initiatives, Bureau of International Security and Nonproliferation, Department of State, Washington, DC 20520, tel.: 202–647–5193.

Background

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 CFR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 30, 2005. In the Order the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery, including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

Information on the additional designees is as follows:

Jahan Tech Rooyan Pars

AKA: Jahan Tech Rooyan Pars Company
AKA: Jahan Tech
Address: B18, Takhte-e-Jamshid Building, Science and Technology Park, Shiraz, Iran

Mandegar Baspar Kimiya Company

AKA: Mandegar Baspar Fajr Asia
AKA: Javid Bardiya Tejarat
Address: No. 510, 5th Floor, Saddi Trading Building, South SAA DI Street, Tehran, Iran

The Nuclear Science And Technology Research Institute

AKA: NSTRI
AKA: Research Institute of Nuclear Science and Technology
AKA: Nuclear Science and Technology Research Institute
AKA: Nuclear Science and Technology Research Center
Address: P.O. Box 11365–3486, Tehran, Iran
Address: P.O. Box 14399–51113, Tehran, Iran
Address: North Karegar Ave., P.O. Box 14399/51113, Tehran, Iran
Address: Moazzen Blvd. Rajaee Shahr, Karaj, Iran, P.O. Box 31485–498
Address: End of Karegare Shomali Street, P.O. Box 11365–3486, Tehran, Iran

The Organization of Defensive Innovation and Research

AKA: SPND
Address: Negarestan 3, off of Pasdaran Street, Tehran, Iran

Dated: August 28, 2014.

Rose Gottemoeller,

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

[FR Doc. 2014–22620 Filed 9–22–14; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice Before Waiver With Respect To Land at Hanover County Municipal Airport, Hanover, Virginia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The FAA is publishing notice of proposed release of 2.94 acres of land at the Hanover County Airport, Hanover, Virginia to the Virginia Department of Transportation for construction of the I–95 and Lewistown Road Intersection improvements. An additional 1.07 Acres will be permanently utilized by Virginia Department of Transportation & Dominion Power within utility, and drainage easements. There are no adverse impacts to the airport and the land is not needed for airport development as shown on the Airport Layout Plan. Fair Market Value of the land has been established and will be provided to the County of Hanover for use on future AIP eligible airport development. The airport will benefit from the improvements associated with the I–95 and Lewistown Road Interchange with the enhanced northern access to the airport.

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

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Matthew J. Thys, Manager, FAA Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Richard Henry Rempe, Airport Manager, Hanover County Municipal Airport, at the following address: Richard Henry Rempe, Airport Manager, Hanover County Municipal Airport, P.O. Box 470, Hanover, VA 23069–0470.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew J. Thys, Manager, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166; telephone (703) 661–1354, fax (703) 661–1370, email *Matthew.Thys@faa.gov.*

SUPPLEMENTARY INFORMATION: The Wendell H. Ford Aviation investment and Reform Act for the 21st Century, Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61) (AIR 21), as amended, requires that a 30-day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Issued in Dulles, Virginia, on September 12, 2014.

Matthew J. Thys,

Manager, Washington Airports District Office, Eastern Region.

[FR Doc. 2014–22602 Filed 9–22–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Hazardous Materials Safety Program

AGENCY: Federal Aviation Administration.

ACTION: Notice of Public Meeting.

DATES: *Time and Date:* The public meeting will be held on Tuesday, October 14, 2014 from 9 a.m. until 12 p.m.

SUMMARY: In preparation for the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel's (DGP's) meeting to be held October 20–24, 2014, in Rio de Janeiro, Brazil, the FAA's Office of Hazardous Materials Safety and the Pipeline and Hazardous Materials Safety Administration's (PHMSA) Office of Hazardous Materials Safety announce a public meeting.

ADDRESSES: The public meeting will be held at FAA Headquarters (FOB 10A), Bessie Coleman Conference Center, 2nd Floor, 800 Independence Avenue SW., Washington, DC 20591.

Participants are requested to register by using the following email address: *9-AWA-ASH-ADG-HazMat@faa.gov.*

Please include your name, organization, email address, and indicate whether you will be attending in person or participating via conference call. Conference call connection information will be provided to those who register and indicate that they will participate via conference call.

FOR FURTHER INFORMATION CONTACT: Questions regarding the meeting can be directed to Ms. Janet McLaughlin, Deputy Director, Office of Hazardous Materials Safety, ADG–2, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7530. Email: *9-AWA-ASH-ADG-HazMat@faa.gov.* Questions in advance of the meeting for PHMSA can be directed to Mr. Shane Kelley, Assistant International Standards Coordinator, Pipeline and Hazardous Materials Safety Administration, PHH–10, 1200 New Jersey Ave. SE., Washington, DC 20590, telephone (202) 366–8553, Email: *shane.kelley@dot.gov.*

We are committed to providing equal access to this meeting for all participants. If you need alternative formats or other reasonable accommodations, please call (202) 267–7530 or email *9-AWA-ASH-ADG-HazMat@faa.gov* with your request by close of business on October 6, 2014.

Information and viewpoints provided by stakeholders are requested as the United States delegation prepares for the International Civil Aviation Organization's Dangerous Goods Panel's (ICAO DGP's) Working Group 14 Meeting.

Papers relevant to this ICAO DGP meeting can be viewed at the following Web page: *http://www.icao.int/safety/DangerousGoods/Pages/DGP.aspx.*

A panel of representatives from the FAA and PHMSA will be present. The meetings are intended to be informal, non-adversarial, and to facilitate the public comment process. No individual will be subject to questioning by any other participant. Government representatives on the panel may ask questions to clarify statements. Unless otherwise stated, any statement made during the meetings by a panel member should not be construed as an official position of the US government.

The meeting will be open to all persons, subject to the capacity of the meeting room and phone lines available for those participating via conference call. Every effort will be made to accommodate all persons wishing to attend. The FAA and PHMSA will try to accommodate all speakers, subject to time constraints.

Issued in Washington, DC, on September 16, 2014.

Christopher Glasow,

Director, Office of Hazardous Materials Safety.

[FR Doc. 2014–22603 Filed 9–22–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review; Key West International Airport, Key West, Florida

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed Noise

Compatibility Program that was submitted for Key West International Airport under the provisions of 49 U.S.C. 47504 et. Seq (the Aviation Safety and Noise Abatement Act hereinafter referred to as ''the Act'') and 14 CFR part 150 by Monroe County. This program was submitted subsequent to a determination by FAA that the associated Noise Exposure Maps submitted under 14 CFR part 150 for Key West International Airport were in compliance with applicable requirements effective December 19, 2013, and was published in the **Federal Register** on December 27, 2013. The proposed Noise Compatibility Program will be approved or disapproved on or before March 14, 2015.

DATES: *Effective Date:* The effective date of the start of FAA's review of the associated noise compatibility program is September 15, 2014. The public comment period ends November 14, 2014.

FOR FURTHER INFORMATION CONTACT: Allan Nagy, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazelton National Drive, Suite 400, Orlando, Florida 32822, (407) 812–6331. Comments on the proposed Noise Ccompatibility Program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed Noise Compatibility Program for Key West International Airport which will be approved or disapproved on or before March 14, 2015. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of Title 14 Code of Federal Regulations (CFR) part 150, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the operator has taken or proposes to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has formally received the Noise Compatibility Program for Key West International Airport, effective on September 15, 2014. The airport operator has requested that the FAA review this material and that the noise mitigation measures to be implemented jointly by the airport and surrounding communities, be approved as a Noise Compatibility Program under Section 47504 of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of Noise Compatibility Programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before March 14, 2015.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, Section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety or create an undue burden on interstate or foreign commerce, and whether they are reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments relating to these factors, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the Noise Exposure Maps, the FAA's evaluation of the maps, and the proposed Noise Compatibility Program are available for examination at the following locations: Federal Aviation Administration, Orlando Airports District Office, 5950 Hazelton National Drive, Suite 400, Orlando, Florida 32822.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Orlando, Florida, on September 15, 2014.

Bart Vernace,

Manager, Orlando Airports District Office.

[FR Doc. 2014–22600 Filed 9–22–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement in Buncombe County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescinding of Draft Environmental Impact Statement.

SUMMARY: The FHWA is issuing this notice to advise the public that we are rescinding the Draft Environmental Impact Statement (DEIS) for proposed I–26 Connector from I–40 to US 19–23–70 in Buncombe County, North Carolina. A notice of availability for the DEIS was published in the **Federal Register** on April 11, 2008.

FOR FURTHER INFORMATION CONTACT: For FHWA: Clarence W. Coleman, P.E., Preconstruction and Environment Director, Federal Highway Administration, 310 New Bern Avenue, Ste. 410, Raleigh, North Carolina 27601–1418; Telephone: (919) 747- 7014; email: *clarence.coleman@dot.gov.* FHWA North Carolina Division Office's normal business hours are 8 a.m. to 5 p.m. (Eastern Time). For the North Carolina Department of Transportation (NCDOT): Richard Hancock, P.E., Environmental Director, Project Development and Environmental Analysis, North Carolina Department of Transportation (NCDOT), PDEA—Century Center Bldg. A, 1000 Birch Ridge Drive, Raleigh, North Carolina 27610 (Delivery), 1548 Mail Service Center, Raleigh, North Carolina 27699–1548 (Mail); Telephone (919) 707–6000; email: *RWHancock@ncdot.gov.* NCDOT—Project Development and Environmental Analysis Branch Office's normal business hours are 8 a.m. to 5 p.m. (Eastern Time).

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), is rescinding the DEIS for a proposed multi-lane freeway, part on new location, from I–40 to US 19–23–70 in Buncombe County, North Carolina. On April 11, 2008, FHWA issued a notice of availability for the DEIS for this proposed project requesting that resource agencies and the public provide input and comments as part of the project development process. The Draft EIS evaluated several alternatives, including: (1) No Build, (2) Transportation Systems Management (TSM), (3) Transportation Demand Management (TDM), (4) Mass Transit, and (5) Build Alternatives. A public hearing was held following the completion of the Draft EIS on September 16, 2008. Based on the comments received from various Federal and state agencies and the public, a recent decision to add one build alternative and eliminate one build alternative and updates to many of the supporting technical studies, the FHWA and NCDOT have agreed to rescind the DEIS approved in April 2008.

FHWA and NCDOT plan to prepare a new Draft EIS for the proposed project. A notice of availability for the new DEIS will be issued subsequent to this rescinding notice. Comments or questions concerning the decision to rescind the DEIS approved in April 2008, should be directed to NCDOT or

FHWA at the address provided above. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or NCDOT at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued On: August 7, 2014.

Clarence W. Coleman, Jr.,

Preconstruction & Environment Director, Raleigh, North Carolina.

[FR Doc. 2014–22626 Filed 9–22–14; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2014–0127]

Information Collection for Quarterly Readiness of Strategic Seaport Facilities Reporting

AGENCY: Maritime Administration.

ACTION: Notice of new information collection.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request the approval for three years of a an information collection related to facilities listed in its pre-emergency standby Port Planning Orders (PPOs). MARAD issues PPOs to the Department of Defense-designated Strategic Commercial Seaports in order to provide the Department of Defense (DoD) port facilities in support of military deployments during national emergencies. To ensure port capabilities and status, MARAD seeks to obtain approval to collect quarterly readiness reports from these DOD-designated facilities.

DATES: Comments should be submitted on or before November 24, 2014.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2014–0127 by any of the following methods:

- *Web site/Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments on the electronic docket site.
- *Mail or Hand Delivery to:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.
- *Facsimile/Fax to:* (202) 493–2251.

Instructions: All submissions must include the agency name and docket number for this rulemaking.

Note: All comments received will be posted without change to *http://www.regulations.gov* including any personal information provided.

Docket: For access to the docket to read comments received, go to *http://www.regulations.gov* at any time or to Room W12–401 of the Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nuns Jain, (757) 322–5801, Maritime Administration, U.S. Department of Transportation, 7737 Hampton Boulevard, Building 19, Suite 300, Norfolk, VA 23505 or Email: *nuns.jain@dot.gov.*

SUPPLEMENTARY INFORMATION: *Title of Information Collection:* Information Collection for Quarterly Readiness of Strategic Seaport Facilities Reporting.

Type of Request: New information collection.

OMB Control Number: 2133–NEW.

Form Numbers: TBD.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: Quarterly reports will seek information related to berthing capability, staging and general availability of the port by readiness hours.

Need and Use of the Information: This collection of information MARAD will ensure the preparedness of Strategic Commercial Seaports in support of military deployments during national emergencies.

Description of Respondents: Strategic Commercial Seaports who have been designated by the Commander, Military Surface Deployment and Distribution Command (SDDC) and who have been issued a PPO by MARAD.

Number of Respondents: 16.

Frequency of Response: 4.

Estimated Timer per Response: 1 hour.

Annual Responses: 64 responses.

Estimated Total Annual Burden: 64 hours.

Background: Pursuant to the Defense Production Act of 1950, as amended (Pub. L. 111–67), EO 13603, EO 12656 and 46 CFR part 340, MARAD works with the DoD to ensure national defense preparedness. Accordingly, MARAD issues Port Planning Orders (PPOs) to Department of Defense-designated Strategic Commercial Seaports in order to provide the Department of Defense (DoD) port facilities in support of military deployments during national emergencies. The proposed collection of quarterly information is necessary to validate the port's ability to provide the PPO delineated facilities to the DoD within the PPO delineated time frame.

In a February 2, 2014 report entitled *STRATEGIC SEAPORTS: Opportunities Exist to Improve Interagency Coordination, Readiness Reporting, and Port Preparedness,* the Government Accounting Office (GAO) recommended that MARAD collect readiness data from strategic commercial ports. This information will be used by MARAD to assist DoD in establishing overall contingency plans necessary to meet national emergency preparedness requirements.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: 1. Whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility; 2. the continued accuracy of the burden estimates; 3. ways to enhance the quality, utility, and clarity of the information to be collected; and 4. ways that the burden could be minimized without reducing the quality of the collected information.

Authority: 49 CFR 1.93.

* * * * *

Dated: September 18, 2014.

By Order of the Maritime Administrator,

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2014–22604 Filed 9–22–14; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2014–0101]

Notice of Buy America Waiver

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of Buy America waiver.

SUMMARY: This Notice provides NHTSA's finding with respect to a request from the Idaho Department of Transportation (IDOT) to waive the requirements of Buy America for the purchase of Child Passenger Safety (CPS) training dolls. NHTSA finds that a non-availability waiver of the Buy America requirements is appropriate for the purchase of the CPS training dolls using Federal highway safety grant funds because there are no suitable products produced in the United States.

DATES: The effective date of this waiver is September 29, 2014. Written comments regarding this notice may be submitted to NHTSA and must be received on or before: October 8, 2014.

ADDRESSES: Written comments may be submitted using any one of the following methods:

- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Fax:* Written comments may be faxed to (202) 493–2251.
- *Internet:* To submit comments electronically, go to the Federal regulations Web site at *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Instructions: All comments submitted in relation to this waiver must include the agency name and docket number. Please note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. You may also call the Docket at 202–366–9324.

FOR FURTHER INFORMATION CONTACT: For program issues, contact Barbara Sauers, Office of Regional Operations and Program Delivery, NHTSA (phone: 202–366–0144). For legal issues, contact Andrew DiMarsico, Office of Chief Counsel, NHTSA (phone: 202–366–5263). You may send mail to these officials at National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: This Notice provides NHTSA's finding that a waiver of the Buy America requirements, 23 U.S.C. 313, is appropriate for IDOT to purchase CPS training dolls using grant funds authorized under 23 U.S.C. 402 (section 402) and 23 U.S.C. 405(b) (section 405) to train safety professionals, police officers, fire and emergency medical personnel, educators, and parents on the use of child restraints and occupant protection. Section 402 funds are available for use by State Highway Safety Programs to reduce traffic accidents and deaths, injuries and property damage and to encourage the proper use of occupant protection devices (including the use of safety belts and child restraint systems) by occupants of motor vehicles. 23 U.S.C. 402(a). Section 405(b) funds are available for use by State Highway Safety Programs to implement effective programs to reduce highway deaths and injuries resulting from individuals riding unrestrained or improperly restrained in motor vehicles that, among other things, includes supporting resources and training in all aspects of the use of child restraints. *See* 23 U.S.C. 405(b)(4)(A)(ii).

Buy America provides that NHTSA ''shall not obligate any funds authorized to be appropriated to carry out the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or [Title 23 U.S.C.] and administered by the Department of Transportation, unless steel, iron, and manufactured products used in such project are produced in the United States.'' 23 U.S.C. 313. However, NHTSA may waive those requirements if (1) their application would be inconsistent with the public interest; (2) such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent. 23 U.S.C. 313(b).

IDOT seeks a waiver to purchase CPS training dolls because there are no sufficient products produced domestically that meet the needs identified by IDOT. IDOT aims to use the CPS training dolls to educate caregivers and CPS technicians how to properly restrain infants and children in child restraints and how to select the correct restraint for each child based on the child's age, height, and weight, and/or physical disability. Idaho notes that regular play dolls are inadequate for the purpose of CPS training because such dolls do not accurately replicate an infant's or child's physical build, such as, height, weight, and structural proportions (e.g., an infant's head is 25% of the infant's total body weight). In contrast, CPS training dolls are designed to model the typical physique of a child at a certain age.

Idaho seeks to purchase CPS training dolls from Huggable Images, which offers for sale CPS training dolls that are manufactured in China. This company provides CPS training dolls that simulate newborns (including premature newborns), infants, toddlers and children of varying heights and weights.

However, IDOT is unable to identify other CPS training dolls manufactured in the United States. IDOT states that it worked closely with the Idaho Chapter of the American Academy of Pediatrics to research the availability of CPS training dolls manufactured or assembled in the United States. Its research included Internet research, research through a supplier network, Thomasnet.com and an email request to over 1400 child passenger safety professionals. Despite Idaho's efforts, it was unable to find any American made CPS training dolls. NHTSA conducted similar assessments and is not aware of any CPS training dolls produced in the United States.[1] Since these items are unavailable from a domestic manufacturer, the Buy America waiver is appropriate. NHTSA invites public comment on this conclusion.

In light of the above discussion, and pursuant to 23 U.S.C. 313(b)(2), NHTSA finds that it is appropriate to grant a waiver from the Buy America requirements to IDOT in order to purchase the CPS training dolls. This waiver applies to Idaho and all other States seeking to use section 402 and 405 funds to purchase these items for the purposes mentioned herein. These waivers will continue through fiscal year 2015 and will allow the purchase of these items as required for IDOT and its training programs. Accordingly, this waiver will expire at the conclusion of fiscal year 2015 (September 30, 2015). In accordance with the provisions of Section 117 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy of Users Technical

[1] One company, Nasco, offers one day old infant dolls that are life-like to train expecting parents the basics of baby care. *See http://www.enasco.com/c/fcs/Child+Development_Family+Life/Newborn+Baby+Dolls/. While these training dolls are anatomically correct, they are not necessarily accurate for height and weight that would be appropriate for CPS training.*

Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572), NHTSA is providing this Notice as its finding that a waiver of the Buy America requirements is appropriate for the CPS training dolls. Written comments on this finding may be submitted through any of the methods discussed above.

Authority: 23 U.S.C. 313; Public Law 110–161.

Issued in Washington, DC, under authority delegated in 49 CFR part 1.95.

O. Kevin Vincent,

Chief Counsel.

[FR Doc. 2014–22552 Filed 9–22–14; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2014–0098; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 2002 BMW Z3 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Receipt of petition.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that nonconforming 2002 BMW Z3 passenger cars that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the same 2002 BMW Z3 passenger cars) and they are capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is October 23, 2014.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below. *Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

How to Read Comments Submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: George Stevens, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (Registered Importer R–90–005) (WETL) has petitioned NHTSA to decide whether nonconforming 2002 BMW Z3 passenger cars are eligible for importation into the United States. The vehicles which WETL believes are substantially similar are 2002 BMW Z3 passenger cars that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified 2002 BMW Z3 passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

WETL submitted information with its petition intended to demonstrate that non-U.S. certified 2002 BMW Z3 passenger cars, as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards. Specifically, the petitioner claims that non-U.S. certified 2002 BMW Z3 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch System,* 116 *Motor Vehicle Brake Fluids,* 124 *Accelerator Control Systems,* 135 *Light Vehicle Brake Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly*

Anchorages, 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 225 *Child Restraint Anchorages,* and 302 *Flammability of Interior Materials.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* Replacement of the Speedometer with the U.S.-model component and addition of the brake warning indicator required by the standard.

Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment:* Installation of the required U.S.-model component high mount stop lamp.

Standard No. 110 *Tire Selection and Rims:* Addition of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Replacement of the passenger side rearview mirror with a U.S.-model component or inscription of the required warning statement on the face of that mirror.

Standard No. 114 *Theft Protection:* Addition of compliant audible warning device module which warns when key is left in ignition and driver's door opened.

Standard No. 118 *Power Operated Window, Partition, and Roof Panel Systems:* Installation of compliant ''window transport mechanism'' to make windows inoperative when ignition is switched off and door is opened.

Standard No. 208 *Occupant Crash Protection:* Addition of compliant safety belt warning buzzer and ''gong module''.

Standard No. 301 *Fuel System Integrity:* Installation of a compliant rollover valve and evaporative emissions canister.

Standard No. 401 *Interior Trunk Release:* Installation of a compliant interior trunk release system.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Jeffrey Giuseppe,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 2014–22524 Filed 9–22–14; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2014–0095; Notice 1]

Michelin North America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Michelin North America, Inc. (MNA) has determined that certain Michelin Pilot Street Radial replacement motorcycle tires, do not fully comply with paragraph S6.5(f) of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of More Than 4,536 kilograms (10,000 pounds) and Motorcycles.* MNA has filed an appropriate report dated July 3, 2014, pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports.*

DATES: The closing date for comments on the petition is October 23, 2014.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Deliver:* Deliver comments by hand to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- *Electronically:* Submit comments electronically by: logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

SUPPLEMENTARY INFORMATION: *I. MNA's Petition:* Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR Part 556), MNA submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of MNA's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Tires Involved: Affected are approximately 889 Michelin Pilot Street Radial motorcycle tires, involving a total of three dimensions (110/70 R17 54H, 130/70 R17 62H, and 140/70 R17 66H), that were manufactured between August 12, 2012 and December 21, 2013 in Phrapradaeng, Thailand.

III. Noncompliance: MNA explains that the noncompliance is that on the sidewall containing the DOT Tire Identification Number (TIN,) the marking describing the generic material content of the casing plies for tread and

sidewall, required by paragraph S6.5(f) of FMVSS No. 119, is incorrect.

For the subject tires, the marking reads:

Tread plies	Sidewall plies
2 polyamide ..... 1 aramid.	2 polyamide

The correct marking for these tires is:

Tread plies	Sidewall plies
2 polyester ..... 1 aramid.	2 polyester

V. Rule Text: Paragraph S6.5(f) of FMVSS No. 119 requires in pertinent part:

S6.5 Tire markings. Except as specified in this paragraph, each tire shall be marked on each sidewall with the information specified in paragraphs (a) through (j) of this section. The markings shall be placed between the maximum section width (exclusive of sidewall decorations or curb ribs) and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area which is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width falls within that area, the markings shall appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings shall be in letters and numerals not less than 2 mm (0.078 inch) high and raised above or sunk below the tire surface not less that 0.4 mm (0.015 inch), except that the marking depth shall be not less than 0.25mm (0.010 inch) in the case of motorcycle tires. The tire identification and the DOT symbol labeling shall comply with part 574 of this chapter. Markings may appear on only one sidewall and the entire sidewall area may be used in the case of motorcycle tires and recreational, boat, baggage, and special trailer tires. * * *

(f) The actual number of plies and the composition of the ply cord material in the sidewall and, if different, in the tread area; * * *

V. Summary of MNA's Analyses: MNA stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

(A) FMVSS Safety: The subject tires meet or exceed all of the minimum performance requirements of FMVSS No. 119 for motorcycle tires, and carry on their sidewalls all the other required markings of FMVSS No. 119. The content of these tires is as designed; it is only the marking of the generic material for the casing plies which is inconsistent with the content. Since the generic material marking does not influence the purchase nor the fitment of tires to vehicles, the above described noncompliance is viewed by MNA to have no impact on the performance of the tire, nor the associated motor vehicle safety.

(B) Tire labeling: The subject tires contain the necessary tire material labeling information on at least one sidewall. The number of reinforcing plies in the tread, and in the sidewall, are correct. It is the descriptor for the generic material which is not consistent with the actual content of the tire—''Polyamide'' in place of ''Polyester.'' Since this marking is only on one sidewall and there is no other marking to compare it to, consumers will not be confused by the content of the marking, nor do they make purchasing decisions based upon this mark. Only a specialist, familiar with the differences between 'polyamide' and 'polyester', with access to the internal content of the tire, would recognize this discrepancy.

(C) Market Action: This marking discrepancy has no impact on a consumer's, dealer's, or distributor's ability, nor our ability, to identify product in the event of a market action. During market actions, the tire dimension, brand name, load capacity, and TIN are used to identify tires which are to be removed from the market. The tire's generic material content marking would therefore not have an impact on a consumer's or dealer's ability to implement a market action.

(D) Previous Rulings: On previous occasions, the Agency has reviewed other petitions for inconsequential noncompliance involving the descriptor for the tire's generic material content, e.g., NHTSA–2011–0033–0003: In this case, the term ''Polyester'' was substituted for ''Nylon'' when describing the tread plies. NHTSA agreed with Goodyear that the non-compliances were inconsequential to motor vehicle safety. ''In the agency's judgment, the incorrect labeling of the tire construction information will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on the ply material in a tire.'' We believe that in this instance the marking non-compliances are inconsequential to motor vehicle safety.

MNA has additionally informed NHTSA that it has corrected the noncompliance so that all future production motorcycle tires will comply with FMVSS No. 119.

In summation, MNA believes that the described noncompliance of the subject motorcycle tires is inconsequential to motor vehicle safety, and that its petition, to exempt MNA from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject motorcycle tires that MNA no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve tire distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after MNA notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.

Jeffrey M. Giuseppe,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 2014–22525 Filed 9–22–14; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2014–0093]

Pipeline Safety: Information Collection Activities

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA published a notice with request for comments in the **Federal Register** on June 26, 2014; 79 FR 36378 on an information collection under Office of Management and Budget (OMB) Control No. 2137–0622, titled ''Pipeline Safety: Public Awareness Program.'' PHMSA received no comments. PHMSA is now forwarding the information collection request to OMB and providing an additional 30 days for comments.

DATES: Interested persons are invited to submit comments to OMB on or before October 23, 2014.

ADDRESSES: You may submit comments identified by the docket number PHMSA–2014–0093 by any of the following methods:

- *Fax:* 1–202–395–5806.
- *Mail:* Office of Information and Regulatory Affairs (OIRA), Records Management Center, Room 10102 NEOB, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer for the U.S. Department of Transportation\PHMSA.
- *Email:* Office of Information and Regulatory Affairs, OMB, at the following email address: *OIRA_Submission@omb.eop.gov.*

Requests for a copy of the Information Collection should be directed to Angela Dow by telephone at 202–366–1246, by fax at 202–366–4566, by email at *Angela.Dow1@dot.gov,* or by mail at U.S. Department of Transportation, PHMSA, 1200 New Jersey Avenue SE, PHP–30, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Angela Dow by telephone at 202–366–1246, by fax at 202–366–4566, or by mail at U.S. Department of Transportation, PHMSA, 1200 New Jersey Avenue SE, PHP–30, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies an information collection request that PHMSA will be submitting to OMB for renewal and extension. The information collection expires October 31, 2014, and is identified under Control No. 2137–0622, titled: ''Pipeline Safety: Public Awareness Program.'' The following information is provided for this information collection: (1) Title of the information collection; (2) OMB control number; (3) Type of request; (4) Abstract of the information collection activity; (5) Description of affected public; (6) Estimate of total annual reporting and recordkeeping burden; and (7) Frequency of collection. PHMSA will request a three-year term of approval for this information collection activity. PHMSA requests comments on the following information collection:

Title: Pipeline Safety: Public Awareness Program.

OMB Control Number: 2137–0622.

Type of Request: Renewal of a currently approved information collection.

Abstract: The Federal Pipeline Safety Regulations require each operator to develop and implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's Recommended Practice RP 1162. Upon request, operators must submit their completed programs to PHMSA or, in the case of an intrastate pipeline facility operator, the appropriate state agency. The operator's program documentation and evaluation results must also be available for periodic review by appropriate regulatory agencies (49 CFR 192.616 and 195.440).

Affected Public: Operators of natural gas and hazardous liquid pipelines.

Estimated number of responses: 22,500.

Estimated annual burden hours: 517,480 hours.

Frequency of collection: Annual.

Comments are invited on:

(a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Issued in Washington, DC on September 17, 2014.

John A. Gale,

Director, Office of Standards and Rulemaking.

[FR Doc. 2014–22516 Filed 9–22–14; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. EP 290 (Sub-No. 5) (2014–4)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board, DOT.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the fourth quarter 2014 Rail Cost Adjustment Factor (RCAF) and cost index filed by the Association of American Railroads. The fourth quarter 2014 RCAF (Unadjusted) is 0.977. The fourth quarter 2014 RCAF (Adjusted) is 0.420. The fourth quarter 2014 RCAF–5 is 0.396.

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

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez, (202) 245–0333. Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site, *http://www.stb.dot.gov.* Copies of the decision may be purchased by contacting the Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: September 17, 2014.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2014–22585 Filed 9–22–14; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities; Information Collection Renewal; Submission for OMB Review; Basel II Interagency Supervisory Guidance for the Supervisory Review Process (1557–0242; 3064–0165)

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC) and Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies).

ACTION: Notice.

SUMMARY: The agencies, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA). An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The agencies are soliciting comment concerning the renewal of their information collection titled ''Basel II Interagency Supervisory

Guidance for the Supervisory Review Process (Pillar 2),'' and giving notice that they are sending the collection to OMB for review.

DATES: Comments must be received by October 23, 2014.

ADDRESSES: Comments should be addressed to:

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0242, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FDIC: You may submit comments by any of the following methods:

- *Agency Web site: http://www.fdic.gov/regulations/laws/federal/.* Follow instructions for submitting comments on the Agency Web site.
- *Email: Comments@FDIC.gov.* Include ''Basel II Supervisory Guidance, 3064–0165'' in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Public Inspection:* All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided.

Additionally, please send a copy of your comments by mail to: OCC/FDIC Desk Officer, 1557–0242 and 3064–0165, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: oira *submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT:

OCC: Johnny Vilela or Mary H. Gottlieb, OCC Clearance Officers, (202) 649–5490, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

FDIC: Gary A. Kuiper, Counsel, (202) 898–3719, Legal Division, Federal Deposit Insurance Corporation, NYA–5046, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the PRA, the Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The Agencies are requesting comment on a continuing information collection.

The agencies published a notice for 60 days of comment on June 9, 2014 (79 FR 33039). No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Title of Information Collection: Basel II Interagency Supervisory Guidance for the Supervisory Review Process (Pillar 2).

OMB Control Numbers:

OCC: 1557–0242.

FDIC: 3064–0165.

Frequency of Response: Event-generated.

Affected Public:

OCC: National banks and Federal savings associations.

FDIC: Insured state nonmember banks and certain subsidiaries of these entities.

Abstract: The agencies issued a supervisory guidance document for implementing the supervisory review process (Pillar 2) on July 31, 2008 (73 FR 44620). Sections 37, 41, 43, and 46 of the guidance impose information collection requirements on financial institutions, including national banks and Federal savings associations, which are collectively defined in the guidance as banks. Section 37 states that banks should state clearly the definition of capital used in any aspect of its internal capital adequacy assessment process (ICAAP) and document any changes in the internal definition of capital. Section 41 requires banks to maintain thorough documentation of ICAAP. Section 43 specifies that boards of directors must approve the bank's ICAAP, review it on a regular basis, and approve any changes. Boards of directors also are required under section 46 to periodically review the assessment of overall capital adequacy and to analyze how measures of internal capital adequacy compare with other capital measures (such as regulatory or accounting).

Estimated Burden:

OCC:

Number of Respondents: 26.

Estimated Burden per Respondent: 140 hours.

Total Estimated Annual Burden: 3,640 hours.

FDIC:

Number of Respondents: 8.

Estimated Burden per Respondent: 420 hours.

Total Estimated Annual Burden: 3,360 hours.

Dated: September 18, 2014.

Stuart E. Feldstein,

Director, Legislative & Regulatory Activities Division, Office of the Comptroller of the Currency.

Dated at Washington, DC, the 12th day of September 2014.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–22587 Filed 9–22–14; 8:45 am]

BILLING CODE 4810–33–P; 6714–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Joint Report: Differences in Accounting and Capital Standards Among the Federal Banking Agencies as of December 31, 2013; Report to Congressional Committees

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Report to the Congressional Committees.

SUMMARY: The OCC, the Board, and the FDIC (collectively, the agencies) have prepared this report pursuant to section 37(c) of the Federal Deposit Insurance Act. Section 37(c) requires the agencies to jointly submit an annual report to the Committee on Financial Services of the U.S. House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate describing differences between the accounting and capital standards used by the agencies. The report must be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: *OCC:* Benjamin Pegg, Risk Specialist, Capital Policy, (202) 649–7146, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

Board: Sviatlana Phelan, Senior Financial Analyst, Capital and Regulatory Policy, (202) 912–4306, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

FDIC: David W. Riley, Senior Analyst (Capital Markets), (202) 898–3728, Division of Risk Management Supervision, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The text of the report follows:

Report to the Committee on Financial Services of the U.S. House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate Regarding Differences in Accounting and Capital Standards Among the Federal Banking Agencies

Introduction

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) must jointly submit an annual report to the Committee on Financial Services of the U.S. House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate describing any differences between the accounting and capital standards used by the agencies.[1] The report must be published in the **Federal Register**.

The agencies are submitting this joint report, which covers differences between their uses of accounting or capital standards existing as of December 31, 2013, pursuant to section 37(c) of the Federal Deposit Insurance Act (12 U.S.C. 1831n(c)), as amended. This report covers 2012 and 2013 and describes capital differences similar to those presented in previous reports.[2]

Since the agencies filed their first reports on accounting and capital differences in 1990, they have acted in concert to harmonize their accounting and capital standards and eliminate as many differences as possible. Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803) also directs the agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. The results of these efforts must be ''consistent with the principles of safety and soundness, statutory law and policy, and the public interest.'' [3] In recent years, the agencies have revised their capital standards to harmonize their regulatory capital requirements in a comprehensive manner and to align the amount of capital institutions are required to hold more closely with the credit risks and certain other risks to which they are exposed. These revisions have been made in a uniform manner whenever possible to minimize interagency differences. Although the differences in capital standards have diminished over time significantly, a few differences remain, some of which are statutorily mandated.

Several of the differences described in this report will be resolved beginning in 2014, when revised capital rules take effect for institutions subject to the advanced approaches risk-based capital rules, and in 2015, when revised capital rules take effect for all other institutions subject to those rules. In 2012, the agencies published three notices of proposed rulemaking seeking public comment on the implementation of the Basel III capital standards,[4] a standardized approach for risk weighting assets and off-balance sheet exposures, as well as revisions to the agencies' advanced approaches rules.[5] The agencies adopted these proposals with some revisions and published the revised capital rules in the **Federal Register** in 2013 (revised capital rules).[6]

In 2012, the agencies also revised their market risk capital rules in a uniform manner to better capture positions subject to market risk, reduce pro-cyclicality in market risk capital requirements, enhance sensitivity to market risks, and increase transparency through enhanced disclosures.[7] In the revised capital rules, the agencies also expanded the scope of the market risk capital rules to include savings associations and incorporated the market risk rules into the revised regulatory capital framework.[8]

In addition to the specific differences in capital standards noted below, the

[1] Prior to 2011, the Office of Thrift Supervision (OTS) joined the agencies in submitting this annual report to Congress. Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law. 111–203, 124 Stat. 1376 (2010) (Dodd-Frank Act), transferred the powers, authorities, rights, and duties of the OTS to other federal banking agencies on July 21, 2011 (the transfer date), and the OTS was abolished 90 days later. Under Title III, the OCC assumed all functions of the OTS and the Director of the OTS relating to federal savings associations, and thus the OCC has responsibility for the ongoing supervision, examination, and regulation of federal savings associations as of the transfer date. Title III transferred all supervision, examination, and certain regulatory functions of the OTS relating to state savings associations to the FDIC and all functions relating to the supervision of any savings and loan holding company and non-depository institution subsidiaries of such holding companies to the Board. Accordingly, this report is being submitted by the OCC, Board, and FDIC.

[2] *See, e.g.,* 77 FR 75259 (December 19, 2012).

[3] 12 U.S.C. 4803(a).

[4] *See* BCBS, ''Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems'' (December 2010), *available at www.bis.org/publ/bcbs189.htm.*

[5] *See* 77 FR 52792 (August 30, 2012).

[6] The Board adopted the revised capital rules as final on July 2, 2013 (78 FR 62018 (October 11, 2013)); the OCC adopted the revised capital rules as final on July 9, 2013 (78 FR 62018 (October 11, 2013)); and the FDIC adopted the revised capital rules on an interim basis on July 9, 2013 (78 FR 55340 (September 10, 2013)).

[7] *See* 77 FR 53060 (August 30, 2012).

[8] *See* 78 FR 62018 (October 11, 2013) (OCC and FRB) and 78 FR 55340 (September 10, 2013) (FDIC).

agencies may have differences in how they apply certain aspects of their rules. These differences usually arise as a result of case-specific inquiries that have been presented to only one agency. Agency staffs seek to minimize these occurrences by coordinating responses to the fullest extent reasonably practicable. Furthermore, while the agencies work together to adopt and apply generally uniform capital standards, there are wording differences in various provisions of the agencies' standards that largely date back to each agency's separate initial adoption of these standards prior to 1990.

In general, however, the agencies have substantially similar capital adequacy standards.[9] These standards are based on a common regulatory framework that establishes minimum leverage and risk-based capital ratios for depository institutions (banks and savings associations).[10] The agencies view the leverage and risk-based capital requirements as minimum standards, and most institutions generally are expected to operate with capital levels well above the minimums, particularly those institutions that are expanding or experiencing unusual or high levels of risk.

The agencies note that, with respect to the advanced approaches rules,[11] there are virtually no differences across the agencies' rules because the agencies adopted a joint rule establishing a common advanced approaches framework in December 2007,[12] with subsequent joint revisions.[13] Therefore, most of the risk-based capital differences described below pertain to the agencies' Basel I-based risk-based capital standards.[14]

With respect to reporting standards, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), the agencies have developed the uniform Consolidated Reports of Condition and Income (Call Report) for all insured commercial banks and certain state-chartered savings banks, as well as savings associations.[15]

Differences in Capital Standards Among the Federal Banking Agencies

Financial Subsidiaries

The Gramm-Leach-Bliley Act (GLBA), also known as the Financial Services Modernization Act of 1999, established the framework for financial subsidiaries of banks.[16] GLBA amended the Revised Statutes to permit national banks to conduct certain expanded financial activities through financial subsidiaries. Section 5136A of the Revised Statutes (12 U.S.C. 24a) imposes a number of conditions and requirements upon national banks that have financial subsidiaries, including the regulatory capital treatment applicable to equity investments in such subsidiaries. The statute requires that a national bank deduct from assets and tangible equity the aggregate amount of its equity investments in financial subsidiaries. The statute further requires that the financial subsidiary's assets and liabilities not be consolidated with those of the parent national bank for applicable capital purposes.

State member banks may have financial subsidiaries subject to the same restrictions that apply to national banks.[17] State nonmember banks may also have financial subsidiaries, but they are subject only to a subset of the statutory requirements that apply to national banks and state member banks.[18]

The agencies adopted final rules implementing their respective provisions arising from section 121 of the GLBA for national banks in March 2000, for state nonmember banks in January 2001, and for state member banks in August 2001.[19] The GLBA did not provide new authority to savings associations to own, hold, or operate financial subsidiaries, as defined, and thus the capital rules for savings associations do not contain parallel provisions.

Non-financial Subsidiaries and Subordinate Organizations of Savings Associations

Banks supervised by the agencies generally consolidate all significant majority-owned subsidiaries other than financial subsidiaries for regulatory capital purposes. For subsidiaries other than financial subsidiaries that are not consolidated on a line-by-line basis for financial reporting purposes, joint ventures, and associated companies, the parent organization's investment in each such subordinate organization is, for risk-based capital purposes, deducted from capital or assigned to the 100 percent risk-weight category, depending upon the circumstances. The Board's and the FDIC's rules also permit banks to consolidate the investment on a pro rata basis under appropriate circumstances.

The capital regulations for savings associations are different in some respects because of statutory requirements. A statutorily mandated distinction is drawn between subsidiaries, which generally are majority-owned, that are engaged in activities that are permissible for national banks, and those that are engaged in activities that are not

[9] The agencies' general risk-based capital rules are at 12 CFR part 3 (national banks) and 12 CFR part 167.6 (federal savings associations); 12 CFR parts 208 and 225, appendix A (state member banks and bank holding companies, respectively); 12 CFR part 325, appendix A (state nonmember banks); and 12 CFR part 390, subpart Z (state savings associations).

[10] 12 U.S.C. 1813(c).

[11] Prior to issuance of the revised capital rules, the agencies' advanced approaches rules were at 12 CFR part 3, appendix C (national banks) and 12 CFR part 167, appendix C (federal savings associations); 12 CFR part 208, appendix F, and 12 CFR part 225, appendix G (state member banks and bank holding companies, respectively); 12 CFR part 325, appendix D (state nonmember banks); and 12 CFR part 390, subpart Z, appendix A (state savings associations).

[12] *See* 72 FR 69288 (December 7, 2007).

[13] *See* 76 FR 37620 (June 28, 2011). *See also* revised capital rules. Some minor differences remain in the application of the advanced approaches rule to savings associations, as statutorily mandated.

[14] As mentioned, the revised capital rules eliminate a majority of the non-statutory differences described in this report.

[15] Prior to 2012, the OTS required all OTS-supervised savings associations to file the Thrift Financial Report (TFR). However, in 2011, the agencies adopted revisions to the reporting requirements for savings associations, including a requirement to transition from the quarterly TFR to the quarterly Call Report, effective 2012.

[16] A national bank that has a financial subsidiary must satisfy a number of statutory requirements in addition to the capital deduction and deconsolidation requirements described in the text. The bank (and each of its depository institution affiliates) must be well capitalized and well managed. Asset size restrictions apply to the aggregate amount of the assets of the bank's financial subsidiaries. Certain debt rating requirements apply, depending on the size of the national bank. The national bank is required to maintain policies and procedures to protect the bank from financial and operational risks presented by the financial subsidiary. It is also required to have policies and procedures to preserve the corporate separateness of the financial subsidiary and the bank's limited liability. Finally, transactions between the bank and its financial subsidiary generally must comply with the Federal Reserve Act (FRA) restrictions on affiliate transactions, and the financial subsidiary is considered an affiliate of the bank for purposes of the anti-tying provisions of the Bank Holding Company Act. *See* 12 U.S.C. 24a.

[17] *See* 12 U.S.C. 335 (state member banks are subject to the ''same conditions and limitations'' that apply to national banks that hold financial subsidiaries).

[18] The applicable statutory requirements for state nonmember banks are as follows: The bank (and each of its insured depository institution affiliates) must (1) be well capitalized, (2) comply with the capital deduction and deconsolidation requirements, and (3) satisfy the requirements for policies and procedures to protect the bank from financial and operational risks and to preserve corporate separateness and limited liability for the bank. In addition, the statute requires that any transaction between the bank and a subsidiary that would be classified as a financial subsidiary generally shall be subject to the affiliate transactions restrictions of the FRA. *See* 12 U.S.C. 1831w.

[19] *See* 65 FR 12914 (March 10, 2000) (national banks); 66 FR 1018 (January 5, 2001) (state nonmember banks); 66 FR 42929 (August 16, 2001) (state member banks).

permissible for national banks.[20] When subsidiaries engage in activities that are not permissible for national banks,[21] the parent savings association must deduct the parent's investment in and extensions of credit to these subsidiaries from the capital of the parent organization. If a subsidiary's activities are permissible for a national bank, that subsidiary's assets are generally consolidated with those of the parent organization on a line-by-line basis in accordance with generally accepted accounting principles. If a subordinate organization, other than a subsidiary, engages in activities not permissible for national banks, investments in and loans to that organization generally are deducted from the savings association's capital.[22] If a subordinate organization engages solely in permissible activities, depending on the nature and risk of the activity, investments in and loans to that organization may be assigned either to the 100 percent risk-weight category or deducted from capital. The requirements for non-financial subsidiaries remain unchanged under the revised capital rules.

Leverage Ratio Denominator

Banks supervised by the agencies use average total consolidated assets to calculate the denominator of the leverage ratio. In contrast, savings associations use quarter-end total consolidated assets. Under the rules governing the reservation of authority for savings associations, the OCC and the FDIC reserve the right to require federal and state savings associations, respectively, to compute capital ratios on the basis of average, rather than period-end, assets.

This capital difference has been eliminated under the revised capital rules, which require all banks and savings associations to calculate the denominator of the leverage ratio using average total consolidated assets.

Collateralized Transactions

The general risk-based capital rules of the Board assign a zero percent risk weight to claims collateralized by cash on deposit in the institution or by securities issued or guaranteed by U.S. Government agencies or the central governments of countries that are members of the Organization for Economic Cooperation and Development (OECD), provided there is daily mark-to-market of collateral and maintenance of a positive margin of collateral. The OCC's rules with respect to national banks incorporate similar conditions for such collateralized claims eligible for a zero percent risk weight. However, while the Board's general risk-based capital rules require such claims to be fully collateralized, the OCC's rules governing national banks permit partial collateralization.

Under the FDIC rules for state nonmember banks and the rules for state and federal savings associations, portions of claims collateralized by cash or by securities issued or guaranteed by OECD central governments or U.S. Government agencies receive a 20 percent risk weight. However, these institutions may assign a zero percent risk weight to claims on certain qualifying securities firms that are collateralized by cash on deposit in the institution or by securities issued or guaranteed by the U.S. Government, U.S. Government agencies, or other OECD central governments.

The revised capital rules eliminate this capital difference and provide a common rule text to address capital requirements for collateralized transactions, as well as exposures to sovereign and public sector entities.

Noncumulative Perpetual Preferred Stock

Under the agencies' capital standards, noncumulative perpetual preferred stock is a component of tier 1 capital. The capital standards of the Board, the FDIC with respect to state nonmember banks, and the OCC with respect to national banks, require noncumulative perpetual preferred stock to give the issuer the option to waive the payment of dividends and provide that waived dividends neither accumulate to future periods nor represent a contingent claim on the issuer.

As a result of these requirements, under the risk-based capital rules of the Board, the FDIC with respect to state nonmember banks, and the OCC with respect to national banks, if a bank issues perpetual preferred stock and is required to pay dividends in a form other than cash (*e.g.,* dividends in the form of stock, when cash dividends are not or cannot be paid, and when the bank does not have the option to waive or eliminate dividends), the perpetual preferred stock would not qualify as noncumulative and, therefore, would not be included in tier 1 capital. Under the capital requirements applicable to savings associations, a savings association may request supervisory approval to treat perpetual preferred stock as noncumulative if it requires the payment of dividends in the form of stock when cash dividends are not paid.

This capital difference has been eliminated under the revised capital rules which set forth revised eligibility criteria for regulatory capital instruments. Perpetual preferred stock that requires payment-in-kind (of dividends in the form of stock when cash dividends are not paid) will not be includable in tier 1 capital under the revised capital rules, subject to certain statutory exceptions.

Equity Securities of Government-sponsored Enterprises

The risk-based capital rules of the Board and the FDIC and the capital regulations governing savings associations apply a 100 percent risk weight to equity securities of government-sponsored enterprises (GSEs).[23] In contrast, the OCC's capital rules for national banks apply a 20 percent risk weight to all GSE equity securities.

This capital difference has been eliminated under the revised capital rules, which assign a 20 percent risk weight to an equity exposure to a Federal Home Loan Bank or the Federal Agricultural Mortgage Corporation. In addition, the revised capital rules assign a 100 percent risk weight to preferred stock issued by a GSE. Other GSE equity exposures receive a risk weight of no less than 100 percent or are subject to deduction.

Conversion Factors for Off-balance Sheet Derivative Contracts

Under the agencies' general risk-based capital rules, the credit equivalent amount of a derivative contract that is not subject to a qualifying bilateral netting contract is equal to the sum of the derivative contract's current credit exposure and potential future credit exposure. The potential future exposure is estimated by multiplying the notional principal amount of the contract by a credit conversion factor that is based on the type and remaining maturity of a derivative contract. The regulations of the Board, the FDIC with respect to state nonmember banks, and the OCC with respect to national banks provide a chart illustrating the applicable credit conversion factors, as follows:

[20] *See* 12 U.S.C. 1464(t)(5).

[21] Subsidiaries engaged in activities not permissible for national banks are considered non-includable subsidiaries.

[22] The definitions of subsidiary and subordinate organization are provided in 12 CFR 159.2 (federal savings associations) and 12 CFR 390.251 (state savings associations).

[23] However, Federal Home Loan Bank stock held by banking organizations as a condition of membership receives a 20 percent risk weight.

Remaining maturity	Interest rate (percent)	Exchange rate and gold (percent)	Equity (percent)	Precious metals, except gold (percent)	Other commodities (percent)
One year or less	0.0	1.0	6.0	7.0	10.0
More than one year to five years	0.5	5.0	8.0	7.0	12.0
More than five years	1.5	7.5	10.0	8.0	15.0

In contrast, the regulations governing savings associations provide a table of conversion factors that is less granular as to the types of contracts to which it applies, as well as their remaining maturity, as follows:

Remaining maturity	Interest rate contracts (percent)	Foreign exchange rate contracts (percent)
One year or less	0.0	1.0
Over one year	0.5	5.0

This capital difference has been eliminated under the revised capital rules which require all banks and savings associations to use an identical table of credit conversion factors to determine the potential future exposure of a derivative contract.

Limitation on Subordinated Debt and Limited-Life Preferred Stock

The general risk-based capital rules of the Board, the FDIC with respect to state nonmember banks, and the OCC with respect to national banks limit the amount of subordinated debt and intermediate-term preferred stock that may be recognized as tier 2 capital to 50 percent of tier 1 capital. Such a restriction is not imposed on savings associations; however, the agencies limit the amount of tier 2 capital to 100 percent of tier 1 capital for all banks and savings associations.

In addition, under the general risk-based capital rules of the Board, the FDIC with respect to state nonmember banks, and the OCC with respect to national banks, at the beginning of each of the last five years of the life of a subordinated debt or limited-life preferred stock instrument, the amount eligible for inclusion in tier 2 capital is reduced by 20 percent of the original amount of that instrument (net of redemptions). The regulations governing savings associations provide the option of using either the discounting approach described above or an approach that, during the last seven years of the instrument's life, allows for the full inclusion of all such instruments provided that the aggregate amount of such instruments maturing in any one year does not exceed 20 percent of the savings association's total capital.

This capital difference has been eliminated under the revised capital rules, which do not include the capital limits described above with respect to subordinated debt and limited-life preferred stock. Furthermore, the revised capital rules do not provide savings associations with alternative methodologies for the gradual de-recognition of subordinated debt and limited-life preferred stock from regulatory capital. Under the revised capital rules, all banks and savings associations must reduce the amount of an instrument eligible for inclusion in tier 2 capital by 20 percent each year, at the beginning of each of the last five years of the life of the instrument.

Tangible Capital Requirement

Under section 5(t)(2)(B) of the Home Owners' Loan Act (HOLA), savings associations are required by statute to maintain tangible capital in an amount not less than 1.5 percent of total assets.[24] This particular statutory requirement does not apply to banks. However, under the Prompt Corrective Action (PCA) framework, all insured depository institutions are considered critically undercapitalized if their tangible equity falls below 2 percent.[25] Therefore, the 1.5 percent minimum tangible capital requirement for savings associations is generally not a binding capital requirement given the more stringent PCA critically undercapitalized threshold.

This capital difference has been addressed under the revised capital rules, which are effective for all savings associations beginning in 2015. The revised capital rules define tangible capital for purposes of meeting the requirements of HOLA as the amount of tier 1 capital plus the amount of outstanding perpetual preferred stock (including related surplus) not included in tier 1 capital, which mirrors the definition of ''tangible equity.''

Market Risk Rule

In 1996, the Board, the FDIC with respect to state nonmember banks, and the OCC with respect to national banks, adopted rules requiring banks with significant exposure to market risk to measure and maintain capital to support that risk.[26] Since then, the agencies revised their market risk rules in a uniform manner.[27] However, the market risk framework did not apply to savings associations, as they generally did not engage in the threshold level of trading activity when the market risk rule was adopted.

This capital difference has been eliminated under the revised capital rules, which expanded the scope of the market risk rule to include state and federal savings associations beginning in 2015.

Pledged Deposits, Nonwithdrawable Accounts, and Certain Certificates

The capital regulations governing mutual savings associations permit such institutions to include in tier 1 capital pledged deposits and nonwithdrawable accounts to the extent that such

[24] *See* 12 U.S.C. 1464(t)(1)(A)(ii) and (t)(2)(B).

[25] *See* 12 U.S.C. 1831o(c)(3); *see also* 12 CFR 6.4, 12 CFR 165.4 (OCC); 12 CFR 208.45 (Board); 12 CFR 325.105, 12 CFR 390.455 (FDIC).

[26] *See* 61 FR 47358 (September 6, 1996).

[27] On August 30, 2012, the agencies published a revised market risk final rule that: (1) Enhances the market risk rule's sensitivity to risks that are not adequately captured under the prior market risk rule, (2) increases transparency through enhanced disclosures, and (3) does not rely on credit ratings, consistent with section 939A of the Dodd-Frank Act. *See* 77 FR 53060 (August 30, 2012). On the same day, the agencies proposed a rule that would subject federal and state savings associations to the market risk rule. *See* 77 FR 52978 (August 30, 2012). This proposed rule was finalized as part of the revised capital rules. *See also* 78 FR 62018 (October 11, 2013) (Board and the OCC); and 78 FR 55340 (September 10, 2013) (FDIC). Additional technical revisions to the market risk rule were made by the Board after the revised capital rules were finalized to ensure that the market risk rules align with the revised capital rules that become effective on January 1, 2015 (78 FR 76521). During 2014, the language in the OCC's and FDIC's respective market risk rules is slightly different than the language in the Board's market risk rule with respect to certain exposures to sovereigns and to securitizations, as well as with respect to certain aspects of the definition of the covered position. The FDIC and OCC did not make corresponding technical rule revisions to their respective market risk rules; however, they interpret their rules to align with the technical changes in the Board rule. *See* OCC Bulletin 2013–13 (May 10, 2013) (OCC). When the new market risk rule goes into effect on January 1, 2015, all three agencies will have substantively identical language in their respective market risk rules.

accounts or deposits have no fixed maturity date, cannot be withdrawn at the option of the accountholder, and do not earn interest that carries over to subsequent periods. The regulations also recognize as tier 2 capital net worth certificates, mutual capital certificates, and income capital certificates, so long as such instruments comply with applicable regulations. The risk-based capital rules of the Board, the FDIC with respect to state nonmember banks, and the OCC with respect to national banks do not expressly address these instruments.

This capital difference has been eliminated under the revised capital rules, which set forth substantially identical criteria across the agencies' rules that a capital instrument must meet to be included in a particular tier of capital. Mutual capital instruments may be included in regulatory capital if they meet the specified regulatory capital criteria.[28]

Assets Subject to FDIC or Federal Savings and Loan Insurance Corporation Agreements

The general risk-based capital rules of the Board, the OCC for national banks, and the FDIC for state nonmember banks generally place assets subject to guarantee arrangements by the FDIC or the former Federal Savings and Loan Insurance Corporation (FSLIC) in the 20 percent risk-weight category. The regulations governing savings associations place these assets in the zero percent risk-weight category, provided they are fully covered against capital loss and/or by yield maintenance agreements initiated by the FSLIC, regardless of any later successor agency such as the FDIC.

This capital difference was minimized in 2010 when the agencies clarified that the FDIC loss-sharing agreements with acquirers of assets from failed institutions are considered conditional guarantees for risk-based capital purposes due to contractual conditions imposed on the acquiring institution and that the guaranteed portion of assets subject to an FDIC loss-sharing agreement may be assigned a 20 percent risk weight.[29] Any such assets reported by a savings association, other than those meeting the requirements provided in 12 CFR 167.6(a)(1)(i)(F) (federal savings associations) and 12 CFR 390.466(a)(1)(i)(F) (state savings associations) may similarly receive a 20 percent risk weight.

This capital difference has been eliminated under the revised capital rules, which assign a 20 percent risk weight to all assets supported by a conditional guarantee of the U.S. government or a U.S. government agency.

Risk Weight for Modified or Restructured 1–4 First Mortgage Home Loans

The agencies' general risk-based capital rules vary for 1–4 first mortgage home loans that have been modified or restructured. In general, to qualify for a 50 percent risk weight, under each agency's rules, a first-lien mortgage loan must have been made in accordance with prudent underwriting standards and not be 90 days or more past due. However, each agency's rules also provide additional requirements for the 50 percent risk-weight category that result in different capital treatments. Accordingly, a 1–4 first mortgage home loan that has been restructured receives a 100 percent risk weight under the Board's rules and the OCC's rules for national banks. In contrast, the FDIC's rules for state nonmember banks assign a 50 percent risk weight to any modified home mortgage loan, so long as the loan, as modified, is not 90 days or more past due or in nonaccrual status and meets other applicable criteria for a 50 percent risk weight. The rules for state and federal savings associations are nearly identical to the FDIC's rules for state nonmember banks.

The agencies' rules are consistent with respect to loans modified pursuant to the Home Affordable Mortgage Program (HAMP or Program) implemented by the U.S. Department of the Treasury. In 2009, the agencies together with the OTS adopted a final rule that allows banks and savings associations to risk weight HAMP loans with the same risk weight assigned to the loan prior to the modification so long as the loan continues to meet other applicable prudential criteria.[30]

This capital difference has been eliminated under the revised capital rules, which assign a 100 percent risk weight to all 1–4 mortgage loans that are modified or restructured, except for those restructured under HAMP which may continue to receive a 50 percent risk weight (provided they otherwise meet the prudential criteria for a 50 percent risk weight).

Requirements for the Zero Percent Credit Conversion Factor for Unconditionally Cancellable Commitments

The agencies' general risk-based capital rules assign a zero percent credit conversion factor (*i.e.,* no risk-based capital requirement) to unused portions of commitments (other than asset-backed commercial paper conduits) that have an original maturity of one year or less, or which are unconditionally cancellable at any time provided a separate credit decision is made before each drawing under the facility. Unused portions of retail credit card lines and related plans are deemed to be short-term commitments if the bank, in accordance with applicable law, has an unconditional option to cancel the credit card at any time.

In addition, the rules of the OCC and the rules that apply to both state and federal savings associations permit a zero percent credit conversion factor for unconditionally cancellable commitments if the bank has a contractual right to make, and in fact does make, an annual or more frequent credit review based upon the borrower's current financial condition to determine whether the lending facility should be continued. This provision results in a capital difference among the agencies' rules because it allows a national bank or savings association to assign a zero percent credit conversion factor to such commitments where the bank does not conduct a separate credit review prior to each draw, but periodically (*i.e.,* at least annually) reviews the credit condition of the borrower.

[28] Subject to certain statutory exceptions, all legacy capital instruments that do not satisfy the criteria for common equity, additional tier 1, or tier 2 capital under the revised capital rules must be phased-out of regulatory capital.

[29] *See* OCC Bulletin 2010–10 (March 2, 2010), Risk Weight for FDIC Claims and Guarantees (OCC); Supervision and Regulation Letter (SR 10–4), Clarification of the Risk Weight for Claims on or Guaranteed by the FDIC (Board); and Financial Institution Letter (FIL–7–2010), Clarification of the Risk Weight for Claims on or Guaranteed by the FDIC (FDIC).

[30] *See* 74 FR 31160 (June 30, 2009). However, consistent with the OCC's and the Board's general risk-based capital rules, if a mortgage loan becomes 90 days or more past due or carried in nonaccrual status or is otherwise restructured after being modified under the Program, the loan would be assigned a risk weight of 100 percent. Consistent with the FDIC's general risk-based capital rules, if a mortgage loan is restructured after being modified under the Program, the loan could be assigned a risk weight of 50 percent provided the loan, as modified, is not 90 days or more past due or in nonaccrual status and meets the other applicable criteria for a 50 percent risk weight. Consistent with the rules that apply to savings associations, if a mortgage loan is restructured after being modified under the Program, the loan could be assigned a risk weight of 50 percent provided the loan, as modified, is not 90 days or more past due and meets the other applicable criteria for a 50 percent risk weight.

This capital difference has been eliminated under the revised capital rules which require all banks and savings associations to apply a zero percent credit conversion factor to a commitment that is unconditionally cancellable.

Dated: April 17, 2014.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, September 12, 2014.

Robert deV. Frierson,

Secretary of the Board.

Dated: April 17, 2014.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2014–22593 Filed 9–22–14; 8:45 am]

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Part II

Department of the Interior

Fish and Wildlife Service
50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–HQ–MB–2014–0017; FF09M21200–145–FXMB1231099BPP0]

RIN 1018–AZ80

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service or we) prescribes final late-season frameworks from which States may select season dates, limits, and other options for the 2014–15 migratory bird hunting seasons. These late seasons include most waterfowl seasons, the earliest of which commences on September 27, 2014. The effect of this final rule is to facilitate the States' selection of hunting seasons and to further the annual establishment of the late-season migratory bird hunting regulations.

DATES: This rule takes effect on September 23, 2014.

ADDRESSES: States should send their season selections to: Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, MS MB, 5275 Leesburg Pike, Falls Church, VA 22041–3803. You may inspect comments received on the migratory bird hunting regulations during normal business hours at the Service's office at 5275 Leesburg Pike, Falls Church, VA 22041–3803. You may obtain copies of referenced reports from the street address above, or from the Division of Migratory Bird Management's Web site at *http://www.fws.gov/migratorybirds/,* or at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2014–0017.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, U.S. Fish and Wildlife Service, Department of the Interior, MS: MB, 5275 Leesburg Pike, Falls Church, VA 22041–3803; (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2014

On April 30, 2014, we published in the **Federal Register** (79 FR 24512) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and addressed the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. Major steps in the 2014–15 regulatory cycle relating to open public meetings and **Federal Register** notifications were also identified in the April 30 proposed rule. Further, we explained that all sections of subsequent documents outlining hunting frameworks and guidelines were organized under numbered headings and that subsequent documents refer only to numbered items requiring attention. Therefore, it is important to note that we omit those items requiring no attention, and remaining numbered items appear discontinuous and incomplete.

On June 4, 2014, we published in the **Federal Register** (79 FR 32418) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations. The June 4 supplement also provided detailed information on the proposed 2014–15 regulatory schedule and announced the Service Regulations Committee (SRC) and Flyway Council meetings.

On June 25–26, 2014, we held open meetings with the Flyway Council Consultants, at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2014–15 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2014–15 regular waterfowl seasons.

On July 31, 2014, we published in the **Federal Register** (79 FR 44580) a third document specifically dealing with the proposed frameworks for early-season regulations. On August 28, 2014, we published in the **Federal Register** (79 FR 51402) a final rule which contained final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits. Subsequently, on August 29, 2014, we published a final rule in the **Federal Register** (79 FR 51712) amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons.

On July 30–31, 2014, we held open meetings with the Flyway Council Consultants, at which the participants reviewed the status of waterfowl and developed recommendations for the 2014–15 regulations for these species. On August 22, 2014, we published in the **Federal Register** (79 FR 50512) the proposed frameworks for the 2014–15 late-season migratory bird hunting regulations. This document establishes final frameworks for late-season migratory bird hunting regulations for the 2014–15 season. There are no substantive changes from the August 22 proposed rule. We will publish State selections in the **Federal Register** as amendments to §§ 20.101 through 20.107, and 20.109 of title 50 CFR part 20.

Population Status and Harvest

In the August 22 proposed rule we provided preliminary information on the status and harvest of waterfowl excerpted from various reports. For more detailed information on methodologies and results, you may obtain complete copies of the various reports at the address indicated under **FOR FURTHER INFORMATION CONTACT** or from our Web site at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html.*

Review of Public Comments and Flyway Council Recommendations

The preliminary proposed rulemaking, which appeared in the April 30, 2014, **Federal Register**, opened the public comment period for migratory game bird hunting regulations. The supplemental proposed rule, which appeared in the June 4, 2014, **Federal Register**, discussed the regulatory alternatives for the 2014–15 duck hunting season. Late-season comments are summarized below and numbered in the order used in the June 4 **Federal Register**. We have included only the numbered items pertaining to late-season issues for which we received written comments. Consequently, the issues do not follow in successive numerical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below. Wherever possible, they are discussed under headings corresponding to the numbered items in the April 30 and June 4, 2014, **Federal Register** documents.

General

Written Comments: A commenter protested the entire migratory bird hunting regulations process, the killing of all migratory birds, and status and habitat data on which the migratory bird hunting regulations are based.

Service Response: Our long-term objectives continue to include providing opportunities to harvest portions of certain migratory game bird populations and to limit harvests to levels compatible with each population's ability to maintain healthy, viable numbers. Having taken into account the zones of temperature and the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory birds, we believe that the hunting seasons provided for in this rule are compatible with the current status of migratory bird populations and long-term population goals.

Additionally, we are obligated to, and do, give serious consideration to all information received as public comment. While there are problems inherent with any type of representative management of public-trust resources, we believe that the Flyway-Council system of migratory game bird management has been a longstanding example of State-Federal cooperative management since its establishment in 1952. However, as always, we continue to seek new ways to streamline and improve the process.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussion, and only those containing substantial recommendations are discussed below.

A. General Harvest Strategy

Council Recommendations: The Atlantic, Mississippi, Central, and Pacific Flyway Councils recommended the adoption of the ''liberal'' regulatory alternative.

Service Response: We continue to use adaptive harvest management (AHM) protocols that allow hunting regulations to vary among Flyways in a manner that recognizes each Flyway's breeding-ground derivation of mallards. In 2008, we described and adopted a protocol for regulatory decision-making for the newly defined stock of western mallards (73 FR 43290; July 24, 2008). For the 2014 hunting season, we continue to believe that the prescribed regulatory choice for the Pacific Flyway should be based on the status of this western mallard breeding stock, while the regulatory choice for the Mississippi and Central Flyways should depend on the status of the redefined mid-continent mallard stock. We also recommend that the regulatory choice for the Atlantic Flyway continue to depend on the status of eastern mallards.

For the 2014 hunting season, we are continuing to consider the same regulatory alternatives as those used last year. The nature of the ''restrictive,'' ''moderate,'' and ''liberal'' alternatives has remained essentially unchanged since 1997, except that extended framework dates have been offered in the ''moderate'' and ''liberal'' regulatory alternatives since 2002 (67 FR 47224; July 17, 2002). Also, in 2003, we agreed to place a constraint on closed seasons in the Mississippi and Central Flyways whenever the midcontinent mallard breeding-population size (as defined prior to 2008; traditional survey area plus Minnesota, Michigan, and Wisconsin) was ≥ 5.5 million (68 FR 37362; June 23, 2003). This constraint subsequently was revised in 2008 to ≥ 4.75 million to account for the change in the definition of midcontinent mallards to exclude birds from Alaska and the Old Crow Flats area of the Yukon Territory (73 FR 43293; July 24, 2008).

The optimal AHM strategies for midcontinent and western mallards for the 2014–15 hunting season were calculated using: (1) Harvest-management objectives specific to each mallard stock; (2) the 2014 regulatory alternatives; and (3) current population models and associated weights for midcontinent and western mallards. Based on this year's survey results of 11.04 million midcontinent mallards (traditional survey area minus Alaska and the Old Crow Flats area of the Yukon Territory, plus Minnesota, Wisconsin, and Michigan) and 4.63 million ponds in Prairie Canada, the prescribed regulatory choice for the Mississippi and Central Flyways is the ''liberal'' alternative. Similarly, based on an estimated 0.82 million western mallards (0.32 in California-Oregon and 0.50 in Alaska) the prescribed regulatory alternative in the Pacific Flyway is also ''liberal.''

In 2013, mechanical problems and corresponding safety concerns with Service aircraft limited survey coverage, which precluded our ability to estimate breeding population sizes for the eastern strata of the Waterfowl Breeding and Population Habitat Survey (WBPHS). As a result, we were unable to update eastern mallard AHM model weights and derive an optimal harvest policy for 2014. Therefore, the 2014 eastern mallard AHM decision will be based on the 2014 eastern mallard population estimate and the optimal regulatory strategy derived for the Atlantic Flyway in 2012. Based on an estimated eastern mallard population of 0.86 million (0.22 and 0.63 million respectively in northeast Canada and the northeastern United States), the prescribed regulatory choice for the Atlantic Flyway is the ''liberal'' alternative. We note that in 2012, the eastern mallard observed breeding population was 0.84 million.

Therefore, we concur with the recommendations of the Atlantic, Mississippi, Central, and Pacific Flyway Councils regarding selection of the ''liberal'' regulatory alternative and will adopt the ''liberal'' regulatory alternative, as described in the June 4, 2014, **Federal Register**.

D. Special Seasons/Species Management

iii. Black Ducks

Council Recommendations: The Atlantic and Mississippi Flyway Councils recommended that the Service follow the International Black Duck AHM Strategy for 2014–15.

Service Response: In 2012, we adopted the International Black Duck AHM Strategy (77 FR 49868; August 17, 2012). The formal strategy is the result of 14 years of technical and policy decisions developed and agreed upon by both Canadian and U. S. agencies and waterfowl managers. The strategy clarifies what harvest levels each country will manage for and reduces conflicts over country-specific regulatory policies. Further, the strategy allows for attainment of fundamental objectives of black duck management: Resource conservation, perpetuation of hunting tradition, and equitable access to the black duck resource between Canada and the United States while accommodating the fundamental sources of uncertainty, partial controllability and observability, structural uncertainty, and environmental variation. The underlying model performance is assessed annually, with a comprehensive evaluation of the entire strategy (objectives and model set) planned after 6 years. A copy of the strategy is available at the address indicated under **FOR FURTHER INFORMATION CONTACT,** or from our Web site at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html.*

For the 2014–15 season, the optimal country-specific regulatory strategies were calculated in September 2013 using: (1) The black duck harvest objective (98 percent of long-term cumulative harvest); (2) 2014–15 country-specific regulatory alternatives; (3) parameter estimates for mallard competition and additive mortality; and (4) 2013 estimates of 0.62 million breeding black ducks and 0.50 million breeding mallards in the core survey area. The optimal regulatory choices are the moderate package in Canada and the restrictive package in the United States.

iv. Canvasbacks

Council Recommendations: The Atlantic, Mississippi, Central, and Pacific Flyway Councils recommended a full season for canvasbacks with a 1-bird daily bag limit. Season lengths would be 60 days in the Atlantic and Mississippi Flyways, 74 days in the Central Flyway, and 107 days in the Pacific Flyway.

Service Response: Since 1994, we have followed a canvasback harvest strategy whereby if canvasback population status and production are sufficient to permit a harvest of one canvasback per day nationwide for the entire length of the regular duck season, while still attaining an objective of 500,000 birds the following spring, the season on canvasbacks should be opened. A partial season would be permitted if the estimated allowable harvest was below that associated with a 1-bird daily bag limit for the entire season. If neither of these conditions can be met, the harvest strategy calls for a closed season on canvasbacks nationwide. In 2008 (73 FR 43290; July 24, 2008), we announced our decision to modify the canvasback harvest strategy to incorporate the option for a 2-bird daily bag limit for canvasbacks when the predicted breeding population the subsequent year exceeds 725,000 birds.

This year's spring survey resulted in an estimate of 685,000 canvasbacks. This was similar to the 2013 estimate of 787,000 canvasbacks and 18 percent above the 1955–2013 average. The estimate of ponds in Prairie Canada was 4.6 million, which was also similar to last year's estimate of 4.6 million and 33 percent above the long-term average. Based on harvest predictions using data through 2009, the canvasback harvest strategy predicts a 2015 canvasback population of 730,600 birds under a liberal duck season with a 1-bird daily bag limit and 671,000 with a 2-bird daily bag limit. Because the predicted 2015 spring canvasback population under a ''liberal'' 1-bird bag season is greater than 500,000, and the predicted population under a ''liberal'' 2-bird bag is less than 725,000, and since the recommended duck season under AHM is ''liberal,'' the harvest strategy stipulates that there should be a full canvasback season with a 1-bird daily bag limit.

v. Pintails

Council Recommendations: The Atlantic, Mississippi, Central, and Pacific Flyway Councils recommended a full season for pintails, consisting of a 2-bird daily bag limit and a 60-day season in the Atlantic and Mississippi Flyways, a 74-day season in the Central Flyway, and a 107-day season in the Pacific Flyway.

Service Response: The current derived pintail harvest strategy was adopted by the Service and Flyway Councils in 2010 (75 FR 44856; July 29, 2010). For this year, an optimal regulatory strategy for pintails was calculated with: (1) An objective of maximizing long-term cumulative harvest, including a closed-season constraint of 1.75 million birds; (2) the regulatory alternatives and associated predicted harvest; and (3) current population models and their relative weights. Based on this year's survey results of 3.22 million pintails observed at a mean latitude of 53.9 degrees and a latitude-adjusted breeding population of 3.79 million birds, the optimal regulatory choice for all four Flyways is the ''liberal'' alternative with a 2-bird daily bag limit.

vi. Scaup

Council Recommendations: The Atlantic, Mississippi, Central, and Pacific Flyway Councils recommended use of the ''moderate'' regulation package.

Service Response: In 2008, we adopted and implemented a new scaup harvest strategy (73 FR 43290 on July 24, 2008, and 73 FR 51124 on August 29, 2008) with initial ''restrictive,'' ''moderate,'' and ''liberal'' regulatory packages adopted for each Flyway.

The 2014 breeding population estimate for scaup is 4.61 million, which is similar to the 2013 estimate of 4.17 million. Total estimated U.S. scaup harvest for the 2013–14 season was 0.33 million birds. An optimal regulatory strategy for scaup was calculated with an objective of achieving 95 percent of maximum long-term cumulative harvest and updated model parameters and their relative weights. Based on this year's breeding population estimate of 4.61 million, the optimal regulatory choice for scaup is the ''moderate'' package in all four Flyways.

xi. Other

Council Recommendations: The Central Flyway Council recommended that two additional (bonus) blue-winged teal be allowed in the daily duck bag for the first 16 days of the regular duck season in the production States of Montana, North Dakota, South Dakota, and Wyoming.

The Mississippi Flyway Council recommended that two additional teal (blue-winged, green-winged, and cinnamon teal collectively) be allowed in the daily duck bag for the first 16 days of the regular duck season in the production States of Iowa, Michigan, Minnesota, and Wisconsin. Impacts of both of these changes would be evaluated over the first 3 years, beginning with the 2014–15 hunting season.

Service Response: In the April 30 **Federal Register**, we stated that ''any proposal to increase teal harvest, in order to be consistent with the intent of special regulations, should direct harvest primarily at blue-winged teal . . .'' The recent assessment of teal harvest potential indicated additional harvest for this species can be supported in most years, and we believe the proposal for bonus blue-winged teal will provide hunters increased opportunities with a very low likelihood of negative impacts to the blue-winged teal population. Further, we believe impacts to species other than blue-winged teal also are likely to be low. Thus, we support the Central Flyway Council's recommendation to include bonus blue-winged teal in the regular season daily duck bag limit. We will work with the Flyway to develop appropriate evaluation techniques to monitor any potential effects.

We do not support the Mississippi Flyway Council's recommendation to include all teal in the bonus bag limit. We have clearly stated that the focus of additional teal harvest should be directed at blue-winged teal, and do not support new special regulations that would target other species of waterfowl, including the other teal species. Although the teal harvest potential assessment indicated some additional harvest opportunity exists for both blue-winged and green-winged teal, the amount of additional opportunity for green-winged teal appears to be much lower than for blue-winged teal. For blue-winged teal, the optimal harvest rates predicted for the additive model were about 2–2.5 times higher than observed harvest rates, but the optimal harvest rate for green-winged teal was only 1.3–1.5 times higher than observed rates, suggesting less room for

additional harvest opportunity for green-winged teal. Furthermore, the models used to assess the impacts of harvest on green-winged teal population size did not perform as well as the models used for blue-winged teal. Thus, we have less confidence in the results for green-winged teal. Improving the predictive ability of the green-winged teal models would require improvements to monitoring programs (e.g., banding, harvest, and/or abundance monitoring) beyond those that currently exist. Data were insufficient to assess the harvest potential for cinnamon teal.

Thus, beginning in the 2014–15 regular duck seasons, we will allow two bonus blue-winged teal for the first 16 days of the regular duck season of the Central and Mississippi Flyways when the blue-winged teal population estimate from the traditional survey area (i.e., strata 1–18, 20–50, and 75–77) is >4.7 million birds, and for the first 9 days when the blue-winged teal estimate is between 3.3 and 4.7 million. Bonus blue-winged teal will not be allowed when the blue-winged teal estimate is less than 3.3 million. In the Central Flyway, this regulation would be available only to the States of Montana, North Dakota, South Dakota, and Wyoming. In the Mississippi Flyway, this regulation would be available only to the States of Iowa, Michigan, Minnesota, and Wisconsin.

During the next 3 years, no additional expansion of teal hunting opportunity will be allowed. This will ensure that an evaluation of recently enacted additional teal hunting opportunities can proceed immediately and a comprehensive teal harvest strategy can be developed. The evaluation plan must be reviewed and supported by the Service's Division of Migratory Bird Management, and the strategy vetted by the Harvest Management Working Group and approved by the Service.

Bonus birds of other species will only be considered after a rigorous assessment of the harvest potential of the species, adequate evaluations of the effects of the additional harvest associated with the bonus bag limit on the status of the species, and integration of the regulations into the applicable duck harvest management strategy(ies) in place at the time. Flyway(s) proposing such changes would be responsible for providing the resources for all necessary work.

We prepared an environmental assessment (EA) on the new teal hunting opportunities. Specifics of the five alternatives we analyzed and a copy of the EA can be found on our Web site at *http://www.fws.gov/migratorybirds,* or at *http://www.regulations.gov.*

4. Canada Geese

B. Regular Seasons

Council Recommendations: The Atlantic Flyway Council recommended that regulations for the North Atlantic Population of Canada geese (NAP) be liberalized per the NAP Canada Goose Management Plan and Hunt Strategy. The ''liberal'' season option would consist of a 70-day season with a 3-bird daily bag limit and a framework between October 1 and February 15 for the high- and low-harvest NAP areas. The Council also recommended that the size of the closed area surrounding Santee National Wildlife Refuge and lands in close proximity to the refuge be reduced beginning with the 2014–15 hunting season. The area removed from the closed area would be managed as an Atlantic Flyway Resident Population harvest area with an 80-day season and 5-bird daily bag limit.

The Pacific Flyway Council recommended several changes to dark goose season frameworks:

1. Simplify goose frameworks in the Pacific Flyway by combining interior and coastal States frameworks into single frameworks for Canada geese and brant, white-fronted geese, and light geese. This would include:

a. Increasing the season length for Canada geese in California, Oregon, and Washington from 100 to 107 days; and

b. Changing the framework opening date for geese in California, Oregon, and Washington from the Saturday closest to October 1 to the Saturday closest to September 24.

2. In California, increase the bag limit for Canada geese from 4 to 10 per day, and in those zones where exceptions exist, increase the Canada goose bag limit from 6 to 10 per day.

3. In Oregon, increase the bag limit for Canada geese in the South Coast Zone on hunt days on or before the last Sunday in January from 4 to 6 per day.

4. In Oregon, remove bag limit restrictions for cackling and Aleutian geese in the Northwest and Northwest Special Permit Zones of not more than 3 per day within the overall Canada goose daily bag limit.

5. In Washington, remove the bag limit restriction for cackling geese in Area 2A and 2B (Southwest Washington Permit Zone) of not more than 3 per day within the overall Canada goose daily bag limit.

6. In Oregon and Washington, increase dusky Canada goose quotas from 90 to 165 geese in the Northwest Special Permit Zone of Oregon, and from 45 to 85 geese in Area 2A and 2B of Washington (Southwest Washington Permit Zone).

7. In Utah, Nevada, and Arizona, increase the daily bag limit from 3 to 4 Canada geese and brant, singly or in the aggregate.

8. In Utah, modify the Northern Utah Zone to include the Locomotive State Wildlife Area and adjacent areas which were previously in the Remainder of State Zone.

9. In Utah, modify the descriptions of the Wasatch Front Zone and the Remainder of State Zone so that the Wasatch Front Zone is described by roads instead of county boundaries.

Service Response: We agree with the Atlantic Flyway Council's recommendation concerning liberalization of the frameworks for NAP geese. The 3-year NAP breeding population mean (65,344) is above the 2001–05 level of 59,994 needed for liberalization. Further, the NAP breeding population has been slowly increasing for the past 5 years and NAP harvest in the United States is buffered to a large extent by the Atlantic Flyway Resident Population (AFRP). We also support the Council's recommendation to reduce the closed area in South Carolina. The reduction in the size of the closed area should continue to provide adequate protection for migrant Canada goose stocks associated with this area. Further, opening some new areas to goose hunting will provide additional harvest opportunity on overabundant AFRP Canada geese.

We support the Pacific Flyway Council's recommendations to increase the basic season length in California, Oregon, and Washington from 100 to 107 days, and to change the framework opening date in California, Oregon, and Washington. These recommendations are intended to simplify frameworks by establishing consistency in season lengths and opening dates for Canada goose, light goose, and white-fronted goose seasons throughout the Pacific Flyway south of Alaska. We do not expect the increased season length to significantly increase harvest as many areas in these States already have exceptions for a 107-day season length, or have combinations of youth hunting days, September seasons, and regular seasons which total 107 days.

We also support the Pacific Flyway Council's recommendation to increase the daily bag limit in California from 4 or 6, depending on the zone, to 10 per day. Aleutian, cackling, and western Canada geese represent the primary Canada goose populations inhabiting California, and currently exceed population objectives identified in

Flyway management plans. The most recent 3-year (2012–2014) average estimated number of Aleutian Canada geese is 145,780, well above the population objective of 60,000 geese. The current 3-year (2012–2014) average population estimate for cackling Canada geese is 265,281, and exceeds the population objective of 250,000 geese. Also, the 3-year (2012–2014) average population estimate for the Pacific population of western Canada geese is 249,890, and is nearly double the objective of 126,650 geese. However, the Flyway management plan indicates that the western Canada goose population segment (flock) objective for the California reference area is between 1,000 and 1,250 nesting pairs. The traditional survey area in the northeast portion of the California reference area indicates only 588 nesting pairs, but a broader survey over the California reference area indicates a current 3-year average breeding population estimate of 47,128 geese. We note that California has maintained more restrictive regulations in their Northeast Zone to protect the breeding population of western Canada geese there. While we support the recommendation, we also believe the Flyway management plan for the Pacific population of western Canada geese should be revised by 2016 to update the population objective if necessary and clarify the metric used to index the status of this population and prescribe harvest management regulations.

With regard to the Pacific Flyway Council's recommendation to increase the daily bag limit in Oregon's South Coast Zone on hunt days on or before the last Sunday in January from 4 to 6 per day, we concur. We note that Oregon's South Coast Zone daily bag limit is already 6 Canada geese after the last Sunday in January. Increased bag limits in Oregon's South Coast Zone are intended to increase harvest rates of Aleutian Canada geese, which exceed the Flyway population objective by more than two times.

We also support the Pacific Flyway Council's recommendations to remove the daily bag limit restrictions specific to cackling and Aleutian Canada geese in Oregon's Northwest and Northwest Special Permit Zones of not more than 3 per day, and to remove the daily bag limit restriction specific to cackling Canada geese in Washington's Area 2A and 2B (Southwest Permit Zone) of not more than 3 per day within the basic daily bag limit of 4 Canada geese per day in these areas. As previously noted, Aleutian Canada goose abundance is currently more than double the Flyway population objective, and the number of cackling Canada geese also exceeds the Flyway population objective. The bag limit increases are intended to increase harvest rates of cackling Canada geese and address agricultural damage issues in Oregon and Washington. However, we note that long-term solutions to agricultural depredation issues will not be completely addressed through harvest regulations. Thus, we encourage the States in the Pacific Flyway to continue to work toward implementing other approaches for reducing agricultural depredation as detailed in the Flyway's Canada goose depredation plan.

We also support the Pacific Flyway Council's recommendation to increase the dusky Canada goose quotas from 90 to 165 in Oregon's Northwest Special Permit Zone, and 45 to 85 in Washington's Area 2A and 2B (Southwest Permit Zone). The Flyway's dusky Canada goose management plan specifies that Oregon's and Washington's harvest quotas will increase from 90 and 45 to 165 and 85, respectively, when the 3-year average population of dusky Canada geese exceeds 12,500 (Action level 1). The most current 3-year average population (2011–2014, no estimate was available in 2013) is 13,678. We do not expect change in the quotas to result in increased goose harvest. Oregon and Washington rarely exceed sub-area dusky quotas and do not exceed the current lower quotas. The status of dusky Canada geese continues to be of concern and harvest restrictions have been in place to protect these geese throughout their range since the 1970s. We continue to support the harvest strategy described in the Flyway management plan for this population.

We also support the Pacific Flyway Council's recommendation to increase the daily Canada goose and brant bag limit from 3 to 4 singly or in the aggregate in Arizona, Nevada, and Utah. State restrictions have been imposed in those three States to help establish and build breeding population segments (flocks) identified by State reference areas in the Flyway management plan. However, the current 3-year average population estimate (2012–14) for the Rocky Mountain population of western Canada geese is 144,255, which is substantially above the Flyway population objective of 117,000 geese. The management plan for this population indicates that when the most recent 3-year average breeding population index is between 87,825 and 117,000 geese, minor harvest adjustments may be made for individual flocks and reference areas. Removal of the States' daily bag limit restrictions in Arizona, Nevada, and Utah will make their Canada goose bag limits the same as those in other interior Pacific Flyway States (Colorado, Idaho, and Montana), resulting in greater consistency throughout the Flyway.

Lastly, we support the Pacific Flyway Council's recommendations to modify Utah's Northern Utah Zone and to modify the descriptions of Utah's Wasatch Front Zone and the Remainder of State Zone. The modifications will result in consistent regulations on other nearby wildlife management areas in the Northern Utah Zone, and we do not expect that this change will have any impact on goose harvest. Also, some hunters have had difficulty determining the boundary for the Wasatch Front Zone because the zone was defined based on county lines, which do not necessarily follow visible landmarks. This change in boundary description is more easily identifiable based on visible landmarks and should reduce uncertainty by sportsmen when afield.

5. White-Fronted Geese

Council Recommendations: The Pacific Flyway Council recommended increasing the daily bag limit from 6 to 10 per day in the Pacific Flyway except in Alaska, and expanding the framework opening outside dates in California, Oregon, and Washington from the Saturday closest to October 1 to the Saturday closest to September 24.

Service Response: We support the Pacific Flyway Council's recommendations. The current 3-year average population estimate (2012–14) for Pacific white-fronted geese is 627,108, which is substantially above the Flyway population objective of 300,000 geese. Further, the population has shown an upward trend for nearly the last 30 years. As the number of Pacific white-fronted geese has increased, so have complaints of agricultural damage on wintering and staging areas. The bag limit increase should allow additional harvest of Pacific white-fronted geese while maintaining traditional Canada goose hunting opportunities. We do not expect a significant increase in Tule white-fronted goose harvest with the bag limit increase because restrictive frameworks remain in place in the Pacific Flyway to limit harvest of Tule white-fronted geese (for example, California's Sacramento Valley Special Management Area). Population estimates for Tule white-fronted geese indicate a stable population, and the current 3-year average population estimate (2012–14) is approximately 10,000 geese. While the Special Management Area is in place to restrict the harvest of Tule

geese, the absolute number of Tule geese harvested remains very low (ranging from 40–173 per year). With regard to framework dates, moving the framework opening date ahead by 1 week is intended to simplify frameworks by aligning outside dates for white-fronted goose, Canada goose, and light goose seasons to allow consistency throughout the Pacific Flyway south of Alaska.

6. Brant

Council Recommendations: The Atlantic Flyway Council recommended a 30-day season with a 2-bird daily bag limit for the 2014–15 hunting season.

Service Response: The 2014 mid-winter index (MWI) for Atlantic brant was 132,936. While the brant management plan allows for a 50-day season with a 2-bird daily bag limit when the MWI estimate falls between 125,000 and 150,000 brant, the hunt plan provides for consideration of factors other than population size in decisions about season length. The Council noted that the percentage of young in the brant fall flight in the previous 2 years was extremely low (6.5 percent and 3.7 percent) compared to the previous 10-year average of 17.6 percent, and preliminary information for 2014 suggests a third consecutive year of poor production. We concur with the Council's conservative approach.

7. Snow and Ross's (Light) Geese

Council Recommendations: The Pacific Flyway Council recommended several changes to light goose season frameworks:

1. Changing the framework opening date for light geese in California, Oregon, and Washington from the Saturday closest to October 1 to the Saturday closest to September 24;
2. Increasing the basic bag limit for light geese in California, Oregon, and Washington from 6 or 10 per day to 20 per day; and
3. Implementing a bag limit restriction for light geese in Oregon of 6 per day during all hunts occurring on or before the last Sunday in January.

Service Response: We support the Pacific Flyway Council's recommendation to expand the framework opening outside dates for light geese in California, Oregon, and Washington. Moving the framework opening date ahead by 1 week is intended to simplify frameworks by aligning outside dates for white-fronted goose, Canada goose, and light goose seasons to allow consistency throughout the Pacific Flyway south of Alaska.

We also support the Pacific Flyway Council's recommendations to increase the basic bag limit for light geese in California, Oregon, and Washington from 6 or 10 per day to 20 per day. Increasing the basic light goose bag limit in California, Oregon, and Washington will simplify frameworks by aligning bag limits for light geese to allow consistency throughout the Pacific Flyway south of Alaska. Additionally, three populations of light geese occur in the Pacific Flyway and are above Flyway population objectives based on the most recent breeding population indices. The population estimate for the Western Arctic Population (WAP) of lesser snow geese was 451,000 in 2013, which is above the objective of 200,000 geese. Ross's geese were estimated at 766,000 in 2012, and are above the objective of 100,000 geese. The population estimate for Wrangel Island snow geese was 160,000 in 2013, which is above the objective of 120,000 geese. The Council notes that the Canadian Wildlife Service (CWS) designated WAP lesser snow geese and Ross's geese as overabundant in 2014, based on the populations' long-term growth, evidence of localized habitat degradation on the breeding grounds, low harvest rate, and high adult survival rate. Further, management prescriptions recommended in the WAP lesser snow goose and Ross's goose management plans are meant to keep the populations within objective levels and prevent habitat degradation problems. The increase in daily bag limit is intended to slow the growth rate of WAP lesser snow geese and Ross's geese.

Increasing bag limits on light geese has the potential for additional impacts to Wrangel Island snow geese. Wrangel Island snow geese winter primarily in British Columbia-Washington (60 percent) and California (40 percent), but some winter in Oregon. California is the winter terminus for all three populations of light geese. The number of light geese estimated to winter in California is approximately 1,000,000. Only about 5 percent of the wintering population is composed of Wrangel Island snow geese. We agree with the Council that the large portion of WAP lesser snow geese and Ross's geese wintering in California serve as a buffer to the small portion of Wrangel Island snow geese wintering in California. Further, restrictive frameworks remain in place in Washington and Oregon to restrict harvest of Wrangel Island snow geese including a 4-bird daily bag limit for light geese in Washington's and Oregon's Northwest Permit zones. Also the Pacific Flyway Council recommended retaining the current daily bag limit of 6 light geese in Oregon on or before the last Sunday in January when light geese in the State are likely to be Wrangel Island snow geese.

With regard to implementing a bag limit restriction for light geese in Oregon of 6 per day on or before the last Sunday in January, we concur. Current evidence suggests most light geese in Oregon during fall and early winter are primarily Wrangel Island snow geese, but an influx of WAP lesser snow and Ross's geese occurs during late winter as birds begin to move north toward breeding areas. A bag limit for light geese in Oregon of 6 per day on or before the last Sunday in January is similar to the 6-bird bag limit currently allowed for light geese in Oregon, and should retain protective measures for Wrangel Island snow geese at a time of the year when they make up the majority of light geese inhabiting Oregon.

23. Other

In a July 26, 2013, **Federal Register** (78 FR 45376), the Service issued its Record of Decision (ROD) for the migratory bird hunting program, prepared pursuant to National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) regulations at 40 CFR 1505.2. An integral component of that ROD was the decision to promulgate annual migratory bird hunting regulations using a single process for early and late seasons based on predictions derived from long-term biological information and established harvest strategies. We believe this single process is the most effective alternative for addressing key issues identified during the planning process and will best achieve the purposes and goals of the Service and States. At that time, we stated that implementation of the new process was targeted for the 2015–16 regulations cycle.

In the April 30 proposed rule we discussed how under this new process, the current early and late season regulatory actions will be combined into a new single process. Regulatory proposals will be developed using biological data from the preceding year(s), model predictions, or most recently accumulated data that are available at the time the proposals are being formulated. Individual harvest strategies will be modified using either data from the previous year(s) or model predictions because the current year's data would not be available for many of the strategies. Considerable technical work will be necessary over a period of years to adjust the underlying biological models to the new regulatory time scale. During this transition period, harvest strategies and prescriptions will be

modified to fit into the new regulatory schedule. These adjustments could be accomplished immediately upon adoption of the new process. Many existing regulatory prescriptions used for Canada geese, sandhill cranes, mourning doves, and American woodcock currently work on this basis. The process will be somewhat less precise in some instances because population projections would be used instead of current-year status information. The use of population projections rather than current-year population estimates would add variability to the population estimate from which the regulations are based. However, the uncertainty associated with these status predictions will be accounted for and incorporated into the process. This uncertainty will not result in a disproportionately higher harvest rate for any stock, nor substantially diminish harvest opportunities, either annually or on a cumulative basis. Reducing the number of meetings could lower administrative costs by 40 percent per year and substantially lower the Service's carbon footprint due to a decrease in travel and a reduction in the costs associated with the additional meetings.

Obviously, under this new process, the administrative, meeting, and **Federal Register** schedule will all change significantly. In the ROD, we described a meeting schedule consisting of SRC regulatory meetings in March or April. At the latest, proposed frameworks would be available for public review by early June and final frameworks published by mid-August. The new schedule also allows 30–60 days for public input and comments (currently, the comment period can be as short as 10 days). Further, the ROD stated that the four Flyway Councils may need to meet only once instead of twice per year, and the SRC would meet twice a year, once sometime during fall or early winter (September through January) and once thereafter, instead of the three times they currently convene.

Over the last few months we have worked with the Flyway Councils on a number of administrative, meeting, and **Federal Register** schedule timing options to implement the new regulatory process. As we stated in the April 30 proposed rule, these discussions have led us to a mutually agreeable regulatory schedule that begins earlier than was envisioned in the ROD. We plan to implement the new regulatory schedule in 2015 when the regulatory cycle begins for the 2016–17 hunting seasons. As a benefit to the public, we will review and discuss these changes here before their implementation next summer because of the significantly different regulatory schedule and the fact that the process will begin much earlier than that currently utilized.

Major steps in the 2016–17 regulatory cycle relating to biological information availability, open public meetings, and **Federal Register** notifications are illustrated in the diagram at the end of this rule. At this time, all dates, including biological information, meetings, and publications of **Federal Register** documents are target dates largely consisting of either specific targets (i.e., biological information availability) or target windows (meetings and **Federal Register** publications). More specific target dates will be provided next summer with publication of specific meeting notices and the proposed rulemaking for the 2016–17 hunting seasons.

In summary, the 2016–17 regulatory schedule would begin in mid-June 2015 with the first SRC meeting of the forthcoming year. Flyway technical sections and councils would then meet in September and early October following the release of the waterfowl and webless population status reports in mid-August and the AHM report in early September. After the last Flyway Council meeting, the SRC and Flyway Council Consultants would meet to review information on the current status of migratory shore and upland game birds and waterfowl and develop recommendations for the 2016–17 regulations for these species. Proposed season frameworks, a 30-day public comment period, and final season frameworks would then follow with ultimate publication of all migratory game bird hunting seasons in late May to mid-June of 2016 for the 2016–17 hunting seasons.

As we previously stated, however, there remains considerable technical work necessary over a period of years to adjust the underlying biological models to the new regulatory time scale. We look forward to continuing work on these issues with the Flyway Councils. For a more detailed discussion of the various technical aspects of the new process, we refer the reader to the 2013 SEIS available on our Web site at *http://www.fws.gov/migratorybirds.*

National Environmental Policy Act (NEPA)

The programmatic document, ''Second Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (EIS 20130139),'' filed with the Environmental Protection Agency (EPA) on May 24, 2013, addresses NEPA compliance by the Service for issuance of the annual framework regulations for hunting of migratory game bird species. We published a notice of availability in the **Federal Register** on May 31, 2013 (78 FR 32686), and our Record of Decision on July 26, 2013 (78 FR 45376). We also address NEPA compliance for waterfowl hunting frameworks through the annual preparation of separate environmental assessments, the most recent being ''Duck Hunting Regulations for 2014–15,'' with its corresponding August 2014, finding of no significant impact. In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the person indicated under the caption **FOR FURTHER INFORMATION CONTACT**.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. * * *.'' Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to jeopardize the continued existence of any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has reviewed this rule and has determined that this rule is

significant because it would have an annual effect of $100 million or more on the economy.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

An updated economic analysis was prepared for the 2013–14 season. This analysis was based on data from the newly released 2011 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in **Regulatory Flexibility Act** section below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives were: (1) Issue restrictive regulations allowing fewer days than those issued during the 2012–13 season, (2) issue moderate regulations allowing more days than those in alternative 1, and (3) issue liberal regulations identical to the regulations in the 2012–13 season. For the 2013–14 season, we chose Alternative 3, with an estimated consumer surplus across all flyways of $317.8–$416.8 million. For the 2014–15 season, we have also chosen alternative 3. We also chose alternative 3 for the 2009–10, the 2010–11, the 2011–12, and the 2012–13 seasons. The 2013–14 analysis is part of the record for this rule and is available at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2014–0017.

Regulatory Flexibility Act

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, 2008, and 2013. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2013 Analysis was based on the 2011 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.5 billion at small businesses in 2013. Copies of the Analysis are available upon request from the Division of Migratory Bird Management (see **FOR FURTHER INFORMATION CONTACT**) or from our Web site at *http://www.fws.gov/migratorybirds* or at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2014–0017.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule will have an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we are not deferring the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

This final rule does not contain any new information collection that requires approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. OMB has reviewed and approved the information collection requirements associated with migratory bird surveys and assigned the following OMB control numbers:

- 1018–0010—Mourning Dove Call Count Survey (discontinued 7/29/2014).
- 1018–0019—North American Woodcock Singing Ground Survey (expires 4/30/2015).
- 1018–0023—Migratory Bird Surveys (expires 6/30/2017). Includes Migratory Bird Harvest Information Program, Migratory Bird Hunter Surveys, Sandhill Crane Survey, and Parts Collection Survey.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act (16 U.S.C. 703–711), does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule allows hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally-recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in the April 30 **Federal Register**, we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2014–15 migratory bird hunting season. The resulting proposals were contained in a separate August 11, 2014, proposed rule (79 FR 46940). By virtue of these actions, we have consulted with affected Tribes.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We therefore find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

Therefore, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended (16 U.S.C. 703–711), we prescribe final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials will select hunting season dates and other options. Upon receipt of season selections from these officials, we will publish a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 2014–15 seasons.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2014–15 hunting seasons are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: September 10, 2014.

Michael J. Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

Final Regulations Frameworks for 2014–15 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior approved the following frameworks, which prescribe season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 2014, and March 10, 2015. These frameworks are summarized below.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are three times the daily bag limit.

Permits: For some species of migratory birds, the Service authorizes the use of permits to regulate harvest or monitor their take by sport hunters, or both. In many cases (e.g., tundra swans, some sandhill crane populations), the Service determines the amount of harvest that may be taken during hunting seasons during its formal regulations-setting process, and the States then issue permits to hunters at levels predicted to result in the amount of take authorized by the Service. Thus, although issued by States, the permits would not be valid unless the Service approved such take in its regulations.

These Federally authorized, State-issued permits are issued to individuals, and only the individual whose name and address appears on the permit at the time of issuance is authorized to take migratory birds at levels specified in the permit, in accordance with provisions of both Federal and State regulations governing the hunting season. The permit must be carried by the permittee when exercising its provisions and must be presented to any law enforcement officer upon request. The permit is not transferrable or assignable to another individual, and may not be sold, bartered, traded, or otherwise provided to another person. If the permit is altered or defaced in any way, the permit becomes invalid.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

High Plains Mallard Management Unit—roughly defined as that portion of the Central Flyway that lies west of the 100th meridian.

Definitions

For the purpose of hunting regulations listed below, the collective terms ''dark'' and ''light'' geese include the following species:

Dark geese: Canada geese, white-fronted geese, brant (except in California, Oregon, Washington, and the Atlantic Flyway), and all other goose species except light geese.

Light geese: Snow (including blue) geese and Ross's geese.

Area, Zone, and Unit Descriptions: Geographic descriptions related to late-season regulations are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by Flyway.

Waterfowl Seasons in the Atlantic Flyway

In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, and Pennsylvania, where Sunday hunting is prohibited Statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special Youth Waterfowl Hunting Days

Outside Dates: States may select 2 days per duck-hunting zone, designated as ''Youth Waterfowl Hunting Days,'' in addition to their regular duck seasons. The days must be held outside any regular duck season on a weekend, holidays, or other non-school days when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limits may include ducks, geese, tundra swans, mergansers, coots, moorhens, and gallinules and would be the same as those allowed in the regular season. Flyway species and area restrictions would remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult may not duck hunt but may participate in other seasons that are open on the special youth day. Tundra swans may only be taken by participants possessing applicable tundra swan permits.

Atlantic Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 27) and the last Sunday in January (January 25).

Hunting Seasons and Duck Limits: 60 days. The daily bag limit is 6 ducks, including no more than 4 mallards (no more that 2 of which can be females), 1 black duck, 2 pintails, 1 mottled duck, 1 fulvous whistling duck, 3 wood ducks, 2 redheads, 2 scaup, 1 canvasback, and 4 scoters.

Closures: The season on harlequin ducks is closed.

Sea Ducks: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 2 of which may be hooded mergansers. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, only two of which may be hooded mergansers.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours should be the same as those selected for the Lake Champlain Zone of Vermont.

Connecticut River Zone, Vermont: The waterfowl seasons, limits, and shooting hours should be the same as those selected for the Inland Zone of New Hampshire.

Zoning and Split Seasons: Delaware, Florida, Georgia, Maryland, North Carolina, Rhode Island, South Carolina, Virginia, and West Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, and Vermont may select hunting seasons by zones and may split their seasons into two segments in each zone.

Canada Geese

Season Lengths, Outside Dates, and Limits: Specific regulations for Canada geese are shown below by State. These seasons also include white-fronted geese. Unless specified otherwise, seasons may be split into two segments. In areas within States where the framework closing date for Atlantic Population (AP) goose seasons overlaps with special late-season frameworks for resident geese, the framework closing date for AP goose seasons is January 14.

Connecticut:

North Atlantic Population (NAP) Zone: Between October 1 and February 15, a 70-day season may be held with a 3-bird daily bag limit.

Atlantic Population (AP) Zone: A 50-day season may be held between October 10 and February 5, with a 3-bird daily bag limit.

South Zone: A special season may be held between January 15 and February 15, with a 5-bird daily bag limit.

Resident Population (RP) Zone: An 80-day season may be held between October 1 and February 15, with a 5-bird daily bag limit. The season may be split into 3 segments.

Delaware: A 50-day season may be held between November 15 and February 5, with a 2-bird daily bag limit.

Florida: An 80-day season may be held between October 1 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

Georgia: An 80-day season may be held between October 1 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

Maine: A 70-day season may be held Statewide between October 1 and February 15, with a 3-bird daily bag limit.

Maryland:

RP Zone: An 80-day season may be held between November 15 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

AP Zone: A 50-day season may be held between November 15 and February 5, with a 2-bird daily bag limit.

Massachusetts:

NAP Zone: A 70-day season may be held between October 1 and February 15, with a 3-bird daily bag limit. Additionally, a special season may be held from January 15 to February 15, with a 5-bird daily bag limit.

AP Zone: A 50-day season may be held between October 10 and February 5, with a 3-bird daily bag limit.

New Hampshire: A 70-day season may be held Statewide between October 1 and February 15, with a 3-bird daily bag limit.

New Jersey:

Statewide: A 50-day season may be held between the fourth Saturday in October (October 25) and February 5, with a 3-bird daily bag limit.

Special Late Goose Season Area: A special season may be held in designated areas of North and South New Jersey from January 15 to February 15, with a 5-bird daily bag limit.

New York:

NAP Zone: Between October 1 and February 15, a 70-day season may be held, with a 3-bird daily bag limit in both the High Harvest and Low Harvest areas.

Special Late Goose Season Area: A special season may be held between January 15 and February 15, with a 5-bird daily bag limit in designated areas of Suffolk County.

AP Zone: A 50-day season may be held between the fourth Saturday in October (October 25), except in the Lake

Champlain Area where the opening date is October 10, and February 5, with a 3-bird daily bag limit.

Western Long Island RP Zone: A 107-day season may be held between the Saturday nearest September 24 (September 27) and March 10, with an 8-bird daily bag limit. The season may be split into 3 segments.

Rest of State RP Zone: An 80-day season may be held between the fourth Saturday in October (October 25) and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

North Carolina:

SJBP Zone: A 70-day season may be held between October 1 and December 31, with a 5-bird daily bag limit.

RP Zone: An 80-day season may be held between October 1 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

Northeast Hunt Unit: A 14-day season may be held between the Saturday prior to December 25 (December 20) and January 31, with a 1-bird daily bag limit.

Pennsylvania:

SJBP Zone: A 78-day season may be held between the first Saturday in October (October 4) and February 15, with a 3-bird daily bag limit.

RP Zone: An 80-day season may be held between the fourth Saturday in October (October 25) and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

AP Zone: A 50-day season may be held between the fourth Saturday in October (October 25) and February 5, with a 3-bird daily bag limit.

Rhode Island: A 70-day season may be held between October 1 and February 15, with a 3-bird daily bag limit. A special late season may be held in designated areas from January 15 to February 15, with a 5-bird daily bag limit.

South Carolina: In designated areas, an 80-day season may be held between October 1 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

Vermont:

Lake Champlain Zone and Interior Zone: A 50-day season may be held between October 10 and February 5 with a 3-bird daily bag limit.

Connecticut River Zone: A 70-day season may be held between October 1 and February 15, with a 3-bird daily bag limit.

Virginia:

SJBP Zone: A 40-day season may be held between November 15 and January 14, with a 3-bird daily bag limit. Additionally, a special late season may be held between January 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 50-day season may be held between November 15 and February 5, with a 2-bird daily bag limit.

RP Zone: An 80-day season may be held between November 15 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments.

West Virginia: An 80-day season may be held between October 1 and March 10, with a 5-bird daily bag limit. The season may be split into 3 segments in each zone.

Light Geese

Season Lengths, Outside Dates, and Limits: States may select a 107-day season between October 1 and March 10, with a 25-bird daily bag limit and no possession limit. States may split their seasons into three segments.

Brant

Season Lengths, Outside Dates, and Limits: States may select a 30-day season between the Saturday nearest September 24 (September 27) and January 31, with a 2-bird daily bag limit. States may split their seasons into two segments.

Mississippi Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 27) and the last Sunday in January (January 25).

Hunting Seasons and Duck Limits: The season may not exceed 60 days, with a daily bag limit of 6 ducks, including no more than 4 mallards (no more than 2 of which may be females), 1 mottled duck, 1 black duck, 2 pintails, 3 wood ducks, 1 canvasback, 3 scaup, and 2 redheads. In addition to the daily limits listed above, the States of Iowa, Michigan, Minnesota, and Wisconsin may include an additional 2 blue-winged teal in the daily bag limit in lieu of selecting an experimental September teal season during the first 16 days of the regular duck season in each respective duck hunting zone.

Merganser Limits: The daily bag limit is 5, only 2 of which may be hooded mergansers. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, only 2 of which may be hooded mergansers.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Arkansas and Mississippi, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments.

Season Lengths, Outside Dates, and Limits: States may select seasons for light geese not to exceed 107 days, with 20 geese daily between the Saturday nearest September 24 (September 27) and March 10; for white-fronted geese not to exceed 74 days with 2 geese daily or 88 days with 1 goose daily between the Saturday nearest September 24 (September 27) and the Sunday nearest February 15 (February 15); and for brant not to exceed 70 days, with 2 brant daily or 107 days with 1 brant daily between the Saturday nearest September 24 (September 27) and January 31. There is no possession limit for light geese. States may select seasons for Canada geese not to exceed 92 days with 2 geese daily or 78 days with 3 geese daily between the Saturday nearest September 24 (September 27) and January 31 with the following exceptions listed by State:

Arkansas: The season may extend to February 15.

Indiana:

Late Canada Goose Season Area: A special Canada goose season of up to 15 days may be held during February 1–15 in the Late Canada Goose Season Zone. During this special season, the daily bag limit cannot exceed 5 Canada geese.

Iowa: The season for Canada geese may extend for 107 days. The daily bag limit is 3 Canada geese.

Michigan:

The framework opening date for all geese is September 11 in the Upper Peninsula of Michigan and September 16 in the Lower Peninsula of Michigan.

Southern Michigan Late Canada Goose Season Zone: A 30-day special Canada goose season may be held between December 31 and February 15. The daily bag limit is 5 Canada geese.

Minnesota: The season for Canada geese may extend for 107 days. The daily bag limit is 3 Canada geese.

Missouri: The season for Canada geese may extend for 85 days. The daily bag limit is 3 Canada geese.

Tennessee: Northwest Zone—The season for Canada geese may extend to February 15.

Wisconsin:

Horicon Zone: The framework opening date for all geese is September 16.

Exterior Zone: The framework opening date for all geese is September 16.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Central Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 27) and the last Sunday in January (January 25).

Hunting Seasons:

High Plains Mallard Management Unit (roughly defined as that portion of the Central Flyway which lies west of the 100th meridian): 97 days. The last 23 days must run consecutively and may start no earlier than the Saturday nearest December 10 (December 13).

Remainder of the Central Flyway: 74 days.

Bag Limits: The daily bag limit is 6 ducks, with species and sex restrictions as follows: 5 mallards (no more than 2 of which may be females), 3 scaup, 2 redheads, 3 wood ducks, 2 pintails, and 1 canvasback. In Texas, the daily bag limit on mottled ducks is 1, except that no mottled ducks may be taken during the first 5 days of the season. In addition to the daily limits listed above, the States of Montana, North Dakota, South Dakota, and Wyoming, in lieu of selecting an experimental September teal season, may include an additional daily bag and possession limit of 2 and 6 blue-winged teal, respectively, during the first 16 days of the regular duck season in each respective duck hunting zone. These extra limits are in addition to the regular duck bag and possession limits.

Merganser Limits: The daily bag limit is 5 mergansers, only 2 of which may be hooded mergansers. In States that include mergansers in the duck daily bag limit, the daily limit may be the same as the duck bag limit, only two of which may be hooded mergansers.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Colorado, Kansas (Low Plains portion), Montana, Nebraska, New Mexico, Oklahoma (Low Plains portion), South Dakota (Low Plains portion), Texas (Low Plains portion), and Wyoming may select hunting seasons by zones.

In Colorado, Kansas, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, the regular season may be split into two segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Central Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation by each participating State.

Outside Dates: For dark geese, seasons may be selected between the outside dates of the Saturday nearest September 24 (September 27) and the Sunday nearest February 15 (February 15). For light geese, outside dates for seasons may be selected between the Saturday nearest September 24 (September 27) and March 10. In the Rainwater Basin Light Goose Area (East and West) of Nebraska, temporal and spatial restrictions that are consistent with the late-winter snow goose hunting strategy cooperatively developed by the Central Flyway Council and the Service are required.

Season Lengths and Limits:

Light Geese: States may select a light goose season not to exceed 107 days. The daily bag limit for light geese is 50 with no possession limit.

Dark Geese: In Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and the Eastern Goose Zone of Texas, States may select a season for Canada geese (or any other dark goose species except white-fronted geese) not to exceed 107 days with a daily bag limit of 8. For white-fronted geese, these States may select either a season of 74 days with a bag limit of 2 or an 88-day season with a bag limit of 1.

In Colorado, Montana, New Mexico, and Wyoming, States may select seasons not to exceed 107 days. The daily bag limit for dark geese is 5 in the aggregate.

In the Western Goose Zone of Texas, the season may not exceed 95 days. The daily bag limit for Canada geese (or any other dark goose species except white-fronted geese) is 5. The daily bag limit for white-fronted geese is 1.

Pacific Flyway

Ducks, Mergansers, Coots, Common Moorhens, and Purple Gallinules

Outside Dates: Between the Saturday nearest September 24 (September 27) and the last Sunday in January (January 25).

Hunting Seasons and Duck and Merganser Limits: Concurrent 107 days. The daily bag limit is 7 ducks and mergansers, including no more than 2 female mallards, 2 pintails, 1 canvasback, 3 scaup, and 2 redheads. For scaup, the season length is 86 days, which may be split according to applicable zones/split duck hunting configurations approved for each State.

The season on coots, common moorhens, and purple gallinules may be between the outside dates for the season on ducks, but not to exceed 107 days.

Coot, Common Moorhen, and Purple Gallinule Limits: The daily bag limit of coots, common moorhens, and purple gallinules are 25, singly or in the aggregate.

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and Wyoming may select hunting seasons by zones. Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and Wyoming may split their seasons into two segments.

Colorado, Montana, and New Mexico may split their seasons into three segments.

Colorado River Zone, California: Seasons and limits should be the same as seasons and limits selected in the adjacent portion of Arizona (South Zone).

Geese

Season Lengths, Outside Dates, and Limits:

Canada geese and brant: Except as subsequently noted, 107-day seasons may be selected with outside dates between the Saturday nearest September 24 (September 27) and the last Sunday in January (January 25). In Arizona, Colorado, Idaho, Montana, Nevada, and Utah, the daily bag limit is 4 Canada geese and brant in the aggregate. In California, Oregon, and Washington, the daily bag limit is 4 Canada geese. For brant, Oregon and Washington may select a 16-day season and California a 30-day season. Days must be consecutive. Washington and California may select hunting seasons for up to two zones. The daily bag limit is 2 brant and is in addition to other goose limits. In Oregon and California, the brant season must end no later than December 15.

White-fronted geese: Except as subsequently noted, 107-day seasons may be selected with outside dates between the Saturday nearest September 24 (September 27) and March 10. The daily bag limit is 10.

Light geese: Except as subsequently noted, 107-day seasons may be selected with outside dates between the Saturday nearest September 24 (September 27) and March 10. The basic daily bag limit is 20.

Split Seasons: Unless otherwise specified, seasons for geese may be split into up to 3 segments. Three-way split seasons for Canada geese and white-fronted geese require Pacific Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

California: The daily bag limit for Canada geese is 10.

Balance-of-State Zone: A Canada goose season may be selected with

outside dates between the Saturday nearest September 24 (September 27) and March 10. In the Sacramento Valley Special Management Area, the season on white-fronted geese must end on or before December 28, and the daily bag limit is 3 white-fronted geese. In the North Coast Special Management Area, hunting days that occur after the last Sunday in January should be concurrent with Oregon's South Coast Zone.

Idaho:

Zone 2: Idaho will continue to monitor the snow goose hunt that occurs after the last Sunday in January in the American Falls Reservoir/Fort Hall Bottoms and surrounding areas at 3-year intervals.

New Mexico: The daily bag limit for Canada geese and brant is 3 in the aggregate.

Oregon: The daily bag limit for light geese is 6 on or before the last Sunday in January.

Harney and Lake County Zone: For Lake County only, the daily white-fronted goose bag limit is 1.

Northwest Zone: For geese, outside dates are between the Saturday nearest September 24 (September 27) and March 10. The season may be split into 3 segments.

Northwest Special Permit Zone: For geese, outside dates are between the Saturday nearest September 24 (September 27) and March 10. The season may be split into 3 segments. The daily bag limit of light geese is 4.

South Coast Zone: A Canada goose season may be selected with outside dates between the Saturday nearest September 24 (September 27) and March 10. The daily bag limit is 6. Hunting days that occur after the last Sunday in January should be concurrent with California's North Coast Special Management Area. The season may be split into 3 segments.

Utah: A Canada goose and brant season may be selected in the Wasatch Front and Washington County Zones with outside dates between the Saturday nearest September 24 (September 27) and the first Sunday in February (February 1).

Washington: The daily bag limit is 4 geese.

Area 1: Outside dates are between the Saturday nearest September 24 (September 27) and the last Sunday in January (January 25).

Areas 2A and 2B (Southwest Permit Zone): Regular goose seasons may be split into 3 segments. A special late goose season may be held between the Saturday following the close of the general goose season and March 10. In the Southwest Permit Zone Area 2B (Pacific County), the daily bag limit may include 1 Aleutian goose.

Area 4: The season may be split into 3 segments.

Wyoming: The daily bag limit for Canada geese and brant is 3 in the aggregate.

Permit Zones

In Oregon and Washington permit zones, goose seasons must end upon attainment of individual quotas of dusky Canada geese allotted to the designated areas of Oregon (165) and Washington (85). The September Canada goose season, regular goose season, any special late Canada goose season, and any extended falconry season, combined, must not exceed 107 days, and the established quota of dusky Canada geese must not be exceeded. Hunting of geese in those designated areas will be only by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance with those regulations aimed at reducing the take of dusky geese. If the monitoring program cannot be conducted, for any reason, the season must immediately close.

Swans

In portions of the Pacific Flyway (Montana, Nevada, and Utah), an open season for taking a limited number of swans may be selected. Permits will be issued by the State and will authorize each permittee to take no more than 1 swan per season with each permit. Nevada may issue up to 2 permits per hunter. Montana and Utah may only issue 1 permit per hunter. Each State's season may open no earlier than the Saturday nearest October 1 (October 4). These seasons are also subject to the following conditions:

Montana: No more than 500 permits may be issued. The season must end no later than December 1. The State must implement a harvest-monitoring program to measure the species composition of the swan harvest and should use appropriate measures to maximize hunter compliance in reporting bill measurement and color information.

Utah: No more than 2,000 permits may be issued. During the swan season, no more than 10 trumpeter swans may be taken. The season must end no later than the second Sunday in December (December 14) or upon attainment of 10 trumpeter swans in the harvest, whichever occurs earliest. The Utah season remains subject to the terms of the Memorandum of Agreement entered into with the Service in August 2001, regarding harvest monitoring, season closure procedures, and education requirements to minimize the take of trumpeter swans during the swan season.

Nevada: No more than 650 permits may be issued. During the swan season, no more than 5 trumpeter swans may be taken. The season must end no later than the Sunday following January 1 (January 4) or upon attainment of 5 trumpeter swans in the harvest, whichever occurs earliest.

In addition, the States of Utah and Nevada must implement a harvest-monitoring program to measure the species composition of the swan harvest. The harvest-monitoring program must require that all harvested swans or their species-determinant parts be examined by either State or Federal biologists for the purpose of species classification. The States should use appropriate measures to maximize hunter compliance in providing bagged swans for examination. Further, the States of Montana, Nevada, and Utah must achieve at least an 80-percent compliance rate, or subsequent permits will be reduced by 10 percent. All three States must provide to the Service by June 30, 2015, a report detailing harvest, hunter participation, reporting compliance, and monitoring of swan populations in the designated hunt areas.

Tundra Swans

In portions of the Atlantic Flyway (North Carolina and Virginia) and the Central Flyway (North Dakota, South Dakota [east of the Missouri River], and that portion of Montana in the Central Flyway), an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States that authorize the take of no more than 1 tundra swan per permit. A second permit may be issued to hunters from unused permits remaining after the first drawing. The States must obtain harvest and hunter participation data. These seasons are also subject to the following conditions:

In the Atlantic Flyway:

—The season may be 90 days, between October 1 and January 31.

—In North Carolina, no more than 5,000 permits may be issued.

—In Virginia, no more than 600 permits may be issued.

In the Central Flyway:

—The season may be 107 days, between the Saturday nearest October 1 (October 4) and January 31.

—In the Central Flyway portion of Montana, no more than 500 permits may be issued.

—In North Dakota, no more than 2,200 permits may be issued.
—In South Dakota, no more than 1,300 permits may be issued.

Area, Unit, and Zone Descriptions Ducks (Including Mergansers) and Coots Atlantic Flyway

Connecticut

North Zone: That portion of the State north of I–95.

South Zone: Remainder of the State.

Maine

North Zone: That portion north of the line extending east along Maine State Highway 110 from the New Hampshire-Maine State line to the intersection of Maine State Highway 11 in Newfield; then north and east along Route 11 to the intersection of U.S. Route 202 in Auburn; then north and east on Route 202 to the intersection of I–95 in Augusta; then north and east along I–95 to Route 15 in Bangor; then east along Route 15 to Route 9; then east along Route 9 to Stony Brook in Baileyville; then east along Stony Brook to the United States border.

Coastal Zone: That portion south of a line extending east from the Maine-New Brunswick border in Calais at the Route 1 Bridge; then south along Route 1 to the Maine-New Hampshire border in Kittery.

South Zone: Remainder of the State.

Massachusetts

Western Zone: That portion of the State west of a line extending south from the Vermont State line on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut State line.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire State line on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island State line; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

New Hampshire

Northern Zone: That portion of the State east and north of the Inland Zone beginning at the Jct. of Rte. 10 and Rte. 25A in Orford, east on Rte. 25A to Rte. 25 in Wentworth, southeast on Rte. 25 to Exit 26 of Rte. I–93 in Plymouth, south on Rte. I–93 to Rte. 3 at Exit 24 of Rte. I–93 in Ashland, northeast on Rte. 3 to Rte. 113 in Holderness, north on Rte. 113 to Rte. 113–A in Sandwich, north on Rte. 113–A to Rte. 113 in Tamworth, east on Rte. 113 to Rte. 16 in Chocorua, north on Rte. 16 to Rte. 302 in Conway, east on Rte. 302 to the Maine-New Hampshire border.

Inland Zone: That portion of the State south and west of the Northern Zone, west of the Coastal Zone, and includes the area of Vermont and New Hampshire as described for hunting reciprocity. A person holding a New Hampshire hunting license which allows the taking of migratory waterfowl or a person holding a Vermont resident hunting license which allows the taking of migratory waterfowl may take migratory waterfowl and coots from the following designated area of the Inland Zone: The State of Vermont east of Rte. I–91 at the Massachusetts border, north on Rte. I–91 to Rte. 2, north on Rte. 2 to Rte. 102, north on Rte. 102 to Rte. 253, and north on Rte. 253 to the border with Canada and the area of NH west of Rte. 63 at the MA border, north on Rte. 63 to Rte. 12, north on Rte. 12 to Rte. 12–A, north on Rte. 12A to Rte. 10, north on Rte. 10 to Rte. 135, north on Rte. 135 to Rte. 3, north on Rte. 3 to the intersection with the Connecticut River.

Coastal Zone: That portion of the State east of a line beginning at the Maine-New Hampshire border in Rollinsford, then extending to Rte. 4 west to the city of Dover, south to the intersection of Rte. 108, south along Rte. 108 through Madbury, Durham, and Newmarket to the junction of Rte. 85 in Newfields, south to Rte. 101 in Exeter, east to Interstate 95 (New Hampshire Turnpike) in Hampton, and south to the Massachusetts border.

New Jersey

Coastal Zone: That portion of the State seaward of a line beginning at the New York State line in Raritan Bay and extending west along the New York State line to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware State line in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania State line in the Delaware River.

South Zone: That portion of the State not within the North Zone or the Coastal Zone.

New York

Lake Champlain Zone: That area east and north of a continuous line extending along U.S. 11 from the New York-Canada International boundary south to NY 9B, south along NY 9B to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont State line.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania State line.

Northeastern Zone: That area north of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 31, east along NY 31 to NY 13, north along NY 13 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to NY 22, north along NY 22 to Washington County Route 153, east along CR 153 to the New York-Vermont boundary, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Pennsylvania

Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I–80.

North Zone: That portion of the State east of the Northwest Zone and north of a line extending east on I–80 to U.S. 220, Route 220 to I–180, I–180 to I–80, and I–80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S.

7 at Vergennes; U.S. 7 to VT 78 at Swanton; VT 78 to VT 36; VT 36 to Maquam Bay on Lake Champlain; along and around the shoreline of Maquam Bay and Hog Island to VT 78 at the West Swanton Bridge; VT 78 to VT 2 in Alburg; VT 2 to the Richelieu River in Alburg; along the east shore of the Richelieu River to the Canadian border.

Interior Zone: That portion of Vermont east of the Lake Champlain Zone and west of a line extending from the Massachusetts border at Interstate 91; north along Interstate 91 to U.S. 2; east along U.S. 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone: The remaining portion of Vermont east of the Interior Zone.

Mississippi Flyway

Alabama

South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

Illinois

North Zone: That portion of the State north of a line extending west from the Indiana border along Peotone-Beecher Road to Illinois Route 50, south along Illinois Route 50 to Wilmington-Peotone Road, west along Wilmington-Peotone Road to Illinois Route 53, north along Illinois Route 53 to New River Road, northwest along New River Road to Interstate Highway 55, south along I–55 to Pine Bluff-Lorenzo Road, west along Pine Bluff-Lorenzo Road to Illinois Route 47, north along Illinois Route 47 to I–80, west along I–80 to I–39, south along I–39 to Illinois Route 18, west along Illinois Route 18 to Illinois Route 29, south along Illinois Route 29 to Illinois Route 17, west along Illinois Route 17 to the Mississippi River, and due south across the Mississippi River to the Iowa border.

Central Zone: That portion of the State south of the North Duck Zone line to a line extending west from the Indiana border along I–70 to Illinois Route 4, south along Illinois Route 4 to Illinois Route 161, west along Illinois Route 161 to Illinois Route 158, south and west along Illinois Route 158 to Illinois Route 159, south along Illinois Route 159 to Illinois Route 3, south along Illinois Route 3 to St. Leo's Road, south along St. Leo's Road to Modoc Road, west along Modoc Road to Modoc Ferry Road, southwest along Modoc Ferry Road to Levee Road, southeast along Levee Road to County Route 12 (Modoc Ferry entrance Road), south along County Route 12 to the Modoc Ferry route and southwest on the Modoc Ferry route across the Mississippi River to the Missouri border.

South Zone: That portion of the State south and east of a line extending west from the Indiana border along Interstate 70, south along U.S. Highway 45, to Illinois Route 13, west along Illinois Route 13 to Greenbriar Road, north on Greenbriar Road to Sycamore Road, west on Sycamore Road to N. Reed Station Road, south on N. Reed Station Road to Illinois Route 13, west along Illinois Route 13 to Illinois Route 127, south along Illinois Route 127 to State Forest Road (1025 N), west along State Forest Road to Illinois Route 3, north along Illinois Route 3 to the south bank of the Big Muddy River, west along the south bank of the Big Muddy River to the Mississippi River, west across the Mississippi River to the Missouri border.

South Central Zone: The remainder of the State between the south border of the Central Zone and the North border of the South Zone.

Indiana

North Zone: That part of Indiana north of a line extending east from the Illinois border along State Road 18 to U.S. 31; north along U.S. 31 to U.S. 24; east along U.S. 24 to Huntington; southeast along U.S. 224; south along State Road 5; and east along State Road 124 to the Ohio border.

Central Zone: That part of Indiana south of the North Zone boundary and north of the South Zone boundary.

South Zone: That part of Indiana south of a line extending east from the Illinois border along U.S. 40; south along U.S. 41; east along State Road 58; south along State Road 37 to Bedford; and east along U.S. 50 to the Ohio border.

Iowa

North Zone: That portion of Iowa north of a line beginning on the South Dakota-Iowa border at Interstate 29, southeast along Interstate 29 to State Highway 175, east along State Highway 175 to State Highway 37, southeast along State Highway 37 to State Highway 183, northeast along State Highway 183 to State Highway 141, east along State Highway 141 to U.S. Highway 30, and along U.S. Highway 30 to the Illinois border.

Missouri River Zone: That portion of Iowa west of a line beginning on the South Dakota-Iowa border at Interstate 29, southeast along Interstate 29 to State Highway 175, and west along State Highway 175 to the Iowa-Nebraska border.

South Zone: The remainder of Iowa.

Kentucky

West Zone: All counties west of and including Butler, Daviess, Ohio, Simpson, and Warren Counties.

East Zone: The remainder of Kentucky.

Louisiana

West: That portion of the State west and north of a line beginning at the Arkansas-Louisiana border on LA 3; south on LA 3 to Bossier City; then east along I–20 to Minden; then south along LA 7 to Ringgold; then east along LA 4 to Jonesboro; then south along U.S. Hwy 167 to its junction with LA 106; west on LA 106 to Oakdale; then south on U.S. Hwy 165 to junction with U.S. Hwy 190 at Kinder; then west on U.S. Hwy 190/LA 12 to the Texas State border.

East: That portion of the State east and north of a line beginning at the Arkansas-Louisiana border on LA 3; south on LA 3 to Bossier City; then east along I–20 to Minden; then south along LA 7 to Ringgold; then east along LA 4 to Jonesboro; then south along U.S. Hwy 167 to Lafayette; then southeast along U.S. Hwy 90 to the Mississippi State line.

Coastal: Remainder of the State.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin State line in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, easterly along U.S. 10 BR to U.S. 10, easterly along U.S. 10 to Interstate Highway 75/U.S. Highway 23, northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, easterly along U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

South Zone: The remainder of Michigan.

Minnesota

North Duck Zone: That portion of the State north of a line extending east from the North Dakota State line along State Highway 210 to State Highway 23 and east to State Highway 39 and east to the

Wisconsin State line at the Oliver Bridge.

South Duck Zone: The portion of the State south of a line extending east from the South Dakota State line along U.S. Highway 212 to Interstate 494 and east to Interstate 94 and east to the Wisconsin State line.

Central Duck Zone: The remainder of the State.

Missouri

North Zone: That portion of Missouri north of a line running west from the Illinois border at Lock and Dam 25; west on Lincoln County Hwy. N to Mo. Hwy. 79; south on Mo. Hwy. 79 to Mo. Hwy. 47; west on Mo. Hwy. 47 to I–70; west on I–70 to the Kansas border.

Middle Zone: The remainder of Missouri not included in other zones.

South Zone: That portion of Missouri south of a line running west from the Illinois border on Mo. Hwy. 74 to Mo. Hwy. 25; south on Mo. Hwy. 25 to U.S. Hwy. 62; west on U.S. Hwy. 62 to Mo. Hwy. 53; north on Mo. Hwy. 53 to Mo. Hwy. 51; north on Mo. Hwy. 51 to U.S. Hwy. 60; west on U.S. Hwy. 60 to Mo. Hwy. 21; north on Mo. Hwy. 21 to Mo. Hwy. 72; west on Mo. Hwy. 72 to Mo. Hwy. 32; west on Mo. Hwy. 32 to U.S. Hwy. 65; north on U.S. Hwy. 65 to U.S. Hwy. 54; west on U.S. Hwy. 54 to U.S. Hwy. 71; south on U.S. Hwy. 71 to Jasper County Hwy. M (Base Line Blvd.); west on Jasper County Hwy. M (Base Line Blvd.) to CRD 40 (Base Line Blvd.); west on CRD 40 (Base Line Blvd.) to the Kansas border.

Ohio

Lake Erie Marsh Zone: Includes all land and water within the boundaries of the area bordered by Interstate 75 from the Ohio-Michigan line to Interstate 280 to Interstate 80 to the Erie-Lorain County line extending to a line measuring two hundred (200) yards from the shoreline into the waters of Lake Erie and including the waters of Sandusky Bay and Maumee Bay.

North Zone: That portion of the State north of a line beginning at the Ohio-Indiana border and extending east along Interstate 70 to the Ohio-West Virginia border.

South Zone: The remainder of Ohio.

Tennessee

Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

Wisconsin

North Zone: That portion of the State north of a line extending east from the Minnesota State line along U.S. Highway 10 into Portage County to County Highway HH, east on County Highway HH to State Highway 66 and then east on State Highway 66 to U.S. Highway 10, continuing east on U.S. Highway 10 to U.S. Highway 41, then north on U.S. Highway 41 to the Michigan State line.

Mississippi River Zone: That area encompassed by a line beginning at the intersection of the Burlington Northern & Santa Fe Railway and the Illinois State line in Grant County and extending northerly along the Burlington Northern & Santa Fe Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota State line.

South Zone: The remainder of Wisconsin.

Central Flyway

Colorado (Central Flyway Portion)

Northeast Zone: All areas east of Interstate 25 and north of Interstate 70.

Southeast Zone: All areas east of Interstate 25 and south of Interstate 70, and all of El Paso, Pueblo, Huerfano, and Las Animas Counties.

Mountain/Foothills Zone: All areas west of Interstate 25 and east of the Continental Divide, except El Paso, Pueblo, Huerfano, and Las Animas Counties.

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Early Zone: That part of Kansas bounded by a line from the Nebraska-Kansas State line south on K–128 to its junction with U.S.–36, then east on U.S.–36 to its junction with K–199, then south on K–199 to its junction with Republic County 30 Rd, then south on Republic County 30 Rd to its junction with K–148, then east on K–148 to its junction with Republic County 50 Rd, then south on Republic County 50 Rd to its junction with Cloud County 40th Rd, then south on Cloud County 40th Rd to its junction with K–9, then west on K–9 to its junction with U.S.–24, then west on U.S.–24 to its junction with U.S.–281, then north on U.S.–281 to its junction with U.S.–36, then west on U.S.–36 to its junction with U.S.–183, then south on U.S.–183 to its junction with U.S.–24, then west on U.S.–24 to its junction with K–18, then southeast on K–18 to its junction with U.S.–183, then south on U.S.–183 to its junction with K–4, then east on K–4 to its junction with I–135, then south on I–135 to its junction with K–61, then southwest on K–61 to McPherson County 14th Avenue, then south on McPherson County 14th Avenue to its junction with Arapaho Rd, then west on Arapaho Rd to its junction with K–61, then southwest on K–61 to its junction with K–96, then northwest on K–96 to its junction with U.S.–56, then southwest on U.S.–56 to its junction with K–19, then east on K–19 to its junction with U.S.–281, then south on U.S.–281 to its junction with U.S.–54, then west on U.S.–54 to its junction with U.S.–183, then north on U.S.–183 to its junction with U.S.–56, then southwest on U.S.–56 to its junction with Ford County Rd 126, then south on Ford County Rd 126 to its junction with U.S.–400, then northwest on U.S.–400 to its junction with U.S.–283, then north on U.S.–283 to its junction with the Nebraska-Kansas State line, then east along the Nebraska-Kansas State line to its junction with K–128.

Late Zone: That part of Kansas bounded by a line from the Nebraska-Kansas State line south on K–128 to its junction with U.S.–36, then east on U.S.–36 to its junction with K–199, then south on K–199 to its junction with Republic County 30 Rd, then south on Republic County 30 Rd to its junction with K–148, then east on K–148 to its junction with Republic County 50 Rd, then south on Republic County 50 Rd to its junction with Cloud County 40th Rd, then south on Cloud County 40th Rd to its junction with K–9, then west on K–9 to its junction with U.S.–24, then west on U.S.–24 to its junction with U.S.–281, then north on U.S.–281 to its junction with U.S.–36, then west on U.S.–36 to its junction with U.S.–183, then south on U.S.–183 to its junction with U.S.–24, then west on U.S.–24 to its junction with K–18, then southeast on K–18 to its junction with U.S.–183, then south on U.S.–183 to its junction with K–4, then east on K–4 to its junction with I–135, then south on I–135 to its junction with K–61, then southwest on K–61 to 14th Avenue, then south on 14th Avenue to its junction with Arapaho Rd, then west on Arapaho Rd to its junction with K–61, then southwest on K–61 to its junction with K–96, then northwest on K–96 to its junction with U.S.–56, then southwest on U.S.–56 to its junction with K–19, then east on K–19 to its junction with U.S.–281, then south on U.S.–281 to its junction with U.S.–54, then west on U.S.–54 to its junction with U.S.–183, then north on U.S.–183 to its junction with U.S.–56, then southwest on U.S.–56 to its junction with Ford County Rd 126, then south on Ford County Rd 126 to its junction with U.S.–400, then northwest on U.S.–400 to its junction with U.S.–283, then south on U.S.–283 to its junction with the

Oklahoma-Kansas State line, then east along the Oklahoma-Kansas State line to its junction with U.S.–77, then north on U.S.–77 to its junction with Butler County, NE 150th Street, then east on Butler County, NE 150th Street to its junction with U.S.–35, then northeast on U.S.–35 to its junction with K–68, then east on K–68 to the Kansas-Missouri State line, then north along the Kansas-Missouri State line to its junction with the Nebraska State line, then west along the Kansas-Nebraska State line to its junction with K–128.

Southeast Zone: That part of Kansas bounded by a line from the Missouri-Kansas State line west on K–68 to its junction with U.S.–35, then southwest on U.S.–35 to its junction with Butler County, NE 150th Street, then west on NE 150th Street until its junction with K–77, then south on K–77 to the Oklahoma-Kansas State line, then east along the Kansas-Oklahoma State line to its junction with the Missouri State line, then north along the Kansas-Missouri State line to its junction with K–68.

Montana (Central Flyway Portion)

Zone 1: The Counties of Blaine, Carbon, Carter, Daniels, Dawson, Fallon, Ferus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Richland, Roosevelt, Sheridan, Stillwater, Sweet Grass, Valley, Wheatland, Wibaux, and Yellowstone.

Zone 2: The Counties of Big Horn, Custer, Prairie, Rosebud, and Treasure.

Nebraska

High Plains: That portion of Nebraska lying west of a line beginning at the South Dakota-Nebraska border on U.S. Hwy. 183; south on U.S. Hwy. 183 to U.S. Hwy. 20; west on U.S. Hwy. 20 to NE Hwy. 7; south on NE Hwy. 7 to NE Hwy. 91; southwest on NE Hwy. 91 to NE Hwy. 2; southeast on NE Hwy. 2 to NE Hwy. 92; west on NE Hwy. 92 to NE Hwy. 40; south on NE Hwy. 40 to NE Hwy. 47; south on NE Hwy. 47 to NE Hwy. 23; east on NE Hwy. 23 to U.S. Hwy. 283; and south on U.S. Hwy. 283 to the Kansas-Nebraska border.

Zone 1: Area bounded by designated Federal and State highways and political boundaries beginning at the South Dakota-Nebraska border west of NE Hwy. 26E Spur and north of NE Hwy. 12; those portions of Dixon, Cedar and Knox Counties north of NE Hwy. 12; that portion of Keya Paha County east of U.S. Hwy. 183; and all of Boyd County. Both banks of the Niobrara River in Keya Paha and Boyd counties east of U.S. Hwy. 183 shall be included in Zone 1.

Zone 2: The area south of Zone 1 and north of Zone 3.

Zone 3: Area bounded by designated Federal and State highways, County Roads, and political boundaries beginning at the Wyoming-Nebraska border at the intersection of the Interstate Canal; east along northern borders of Scotts Bluff and Morrill Counties to Broadwater Road; south to Morrill County Rd 94; east to County Rd 135; south to County Rd 88; southeast to County Rd 151; south to County Rd 80; east to County Rd 161; south to County Rd 76; east to County Rd 165; south to Country Rd 167; south to U.S. Hwy. 26; east to County Rd 171; north to County Rd 68; east to County Rd 183; south to County Rd 64; east to County Rd 189; north to County Rd 70; east to County Rd 201; south to County Rd 60A; east to County Rd 203; south to County Rd 52; east to Keith County Line; east along the northern boundaries of Keith and Lincoln Counties to NE Hwy. 97; south to U.S. Hwy 83; south to E Hall School Rd; east to N Airport Road; south to U.S. Hwy. 30; east to Merrick County Rd 13; north to County Rd O; east to NE Hwy. 14; north to NE Hwy. 52; west and north to NE Hwy. 91; west to U.S. Hwy. 281; south to NE Hwy. 22; west to NE Hwy. 11; northwest to NE Hwy. 91; west to U.S. Hwy. 183; south to Round Valley Rd; west to Sargent River Rd; west to Sargent Rd; west to Milburn Rd; north to Blaine County Line; east to Loup County Line; north to NE Hwy. 91; west to North Loup Spur Rd; north to North Loup River Rd; east to Pleasant Valley/Worth Rd; east to Loup County Line; north to Loup-Brown county line; east along northern boundaries of Loup and Garfield Counties to Cedar River Road; south to NE Hwy. 70; east to U.S. Hwy. 281; north to NE Hwy. 70; east to NE Hwy. 14; south to NE Hwy. 39; southeast to NE Hwy. 22; east to U.S. Hwy. 81; southeast to U.S. Hwy. 30; east to U.S. Hwy. 75; north to the Washington County line; east to the Iowa-Nebraska border; south to the Missouri-Nebraska border; south to Kansas-Nebraska border; west along Kansas-Nebraska border to Colorado-Nebraska border; north and west to Wyoming-Nebraska border; north to intersection of Interstate Canal; and excluding that area in Zone 4.

Zone 4: Area encompassed by designated Federal and State highways and County Roads beginning at the intersection of NE Hwy. 8 and U.S. Hwy. 75; north to U.S. Hwy. 136; east to the intersection of U.S. Hwy. 136 and the Steamboat Trace (Trace); north along the Trace to the intersection with Federal Levee R–562; north along Federal Levee R–562 to the intersection with the Trace; north along the Trace/Burlington Northern Railroad right-of-way to NE Hwy. 2; west to U.S. Hwy. 75; north to NE Hwy. 2; west to NE Hwy. 43; north to U.S. Hwy. 34; east to NE Hwy. 63; north to NE Hwy. 66; north and west to U.S. Hwy. 77; north to NE Hwy. 92; west to NE Hwy. Spur 12F; south to Butler County Rd 30; east to County Rd X; south to County Rd 27; west to County Rd W; south to County Rd 26; east to County Rd X; south to County Rd 21 (Seward County Line); west to NE Hwy. 15; north to County Rd 34; west to County Rd J; south to NE Hwy. 92; west to U.S. Hwy. 81; south to NE Hwy. 66; west to Polk County Rd C; north to NE Hwy. 92; west to U.S. Hwy. 30; west to Merrick County Rd 17; south to Hordlake Road; southeast to Prairie Island Road; southeast to Hamilton County Rd T; south to NE Hwy. 66; west to NE Hwy. 14; south to County Rd 22; west to County Rd M; south to County Rd 21; west to County Rd K; south to U.S. Hwy. 34; west to NE Hwy. 2; south to U.S. Hwy. I–80; west to Gunbarrel Rd (Hall/Hamilton county line); south to Giltner Rd; west to U.S. Hwy. 281; south to U.S. Hwy. 34; west to NE Hwy. 10; north to Kearney County Rd R and Phelps County Rd 742; west to U.S. Hwy. 283; south to U.S. Hwy 34; east to U.S. Hwy. 136; east to U.S. Hwy. 183; north to NE Hwy. 4; east to NE Hwy. 10; south to U.S. Hwy. 136; east to NE Hwy. 14; south to NE Hwy. 8; east to U.S. Hwy. 81; north to NE Hwy. 4; east to NE Hwy. 15; south to U.S. Hwy. 136; east to NE Hwy. 103; south to NE Hwy. 8; east to U.S. Hwy. 75.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

North Dakota

High Plains Unit: That portion of the State south and west of a line from the South Dakota State line along U.S. 83 and I–94 to ND 41, north to U.S. 2, west to the Williams/Divide County line, then north along the County line to the Canadian border.

Low Plains Unit: The remainder of North Dakota.

Oklahoma

High Plains Zone: The Counties of Beaver, Cimarron, and Texas.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north of a line extending east from the Texas State line along OK 33 to OK 47, east along OK 47 to U.S. 183, south along U.S. 183 to I–40, east along I–40

to U.S. 177, north along U.S. 177 to OK 33, east along OK 33 to OK 18, north along OK 18 to OK 51, west along OK 51 to I–35, north along I–35 to U.S. 412, west along U.S. 412 to OK 132, then north along OK 132 to the Kansas State line.

Low Plains Zone 2: The remainder of Oklahoma.

South Dakota

High Plains Zone: That portion of the State west of a line beginning at the North Dakota State line and extending south along U.S. 83 to U.S. 14, east on U.S. 14 to Blunt, south on the Blunt-Canning Rd to SD 34, east and south on SD 34 to SD 50 at Lee's Corner, south on SD 50 to I–90, east on I–90 to SD 50, south on SD 50 to SD 44, west on SD 44 across the Platte-Winner bridge to SD 47, south on SD 47 to U.S. 18, east on U.S. 18 to SD 47, south on SD 47 to the Nebraska State line.

North Zone: That portion of northeastern South Dakota east of the High Plains Unit and north of a line extending east along U.S. 212 to the Minnesota State line.

South Zone: That portion of Gregory County east of SD 47 and south of SD 44; Charles Mix County south of SD 44 to the Douglas County line; south on SD 50 to Geddes; east on the Geddes Highway to U.S. 281; south on U.S. 281 and U.S. 18 to SD 50; south and east on SD 50 to the Bon Homme County line; the Counties of Bon Homme, Yankton, and Clay south of SD 50; and Union County south and west of SD 50 and I–29.

Middle Zone: The remainder of South Dakota.

Texas

High Plains Zone: That portion of the State west of a line extending south from the Oklahoma State line along U.S. 183 to Vernon, south along U.S. 283 to Albany, south along TX 6 to TX 351 to Abilene, south along U.S. 277 to Del Rio, then south along the Del Rio International Toll Bridge access road to the Mexico border.

Low Plains North Zone: That portion of northeastern Texas east of the High Plains Zone and north of a line beginning at the International Toll Bridge south of Del Rio, then extending east on U.S. 90 to San Antonio, then continuing east on I–10 to the Louisiana State line at Orange, Texas.

Low Plains South Zone: The remainder of Texas.

Wyoming (Central Flyway portion)

Zone C1: Big Horn, Converse, Goshen, Hot Springs, Natrona, Park, Platte, and Washakie Counties; and Fremont County excluding the portions west or south of the Continental Divide.

Zone C2: Campbell, Crook, Johnson, Niobrara, Sheridan, and Weston Counties.

Zone C3: Albany and Laramie Counties; and that portion of Carbon County east of the Continental Divide.

Pacific Flyway

Arizona

Game Management Units (GMU) as follows:

South Zone: Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 10 and 12B–45.

North Zone: GMUs 1–5, those portions of GMUs 6 and 8 within Coconino County, and GMUs 7, 9, 12A.

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of Interstate 5 with the California-Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town of Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99; south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines; west along the California-Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada State line south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada State line.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Idaho

Zone 1: All lands and waters within the Fort Hall Indian Reservation, including private in-holdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; Caribou County within the Fort Hall Indian Reservation; and Power County east of State Highway 37 and State Highway 39.

Zone 2: Adams, Bear Lake, Benewah, Blaine, Bonner, Bonneville, Boundary, Butte, Camas, Clark, Clearwater, Custer, Franklin, Fremont, Idaho, Jefferson, Kootenai, Latah, Lemhi, Lewis, Madison, Nez Perce, Oneida, Shoshone, Teton, and Valley Counties; Bingham County within the Blackfoot Reservoir drainage; Caribou County, except the Fort Hall Indian Reservation; and Power County west of State Highway 37 and State Highway 39.

Zone 3: Ada, Boise, Canyon, Cassia, Elmore, Gem, Gooding, Jerome, Lincoln, Minidoka, Owyhee, Payette, Twin Falls, and Washington Counties.

Nevada

Northeast Zone: All of Elko and White Pine Counties.

Northwest Zone: All of Carson City, Churchill, Douglas, Esmeralda, Eureka, Humboldt, Lander, Lyon, Mineral, Nye, Pershing, Storey, and Washoe Counties.

South Zone: All of Clark and Lincoln County.

Oregon

Zone 1: Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, Curry, Josephine, Jackson, Linn, Benton, Polk, Marion, Yamhill, Washington, Columbia, Multnomah, Clackamas, Hood River, Wasco, Sherman, Gilliam, Morrow and Umatilla Counties.

Columbia Basin Mallard Management Unit: Gilliam, Morrow, and Umatilla Counties.

Zone 2: The remainder of the State.

Utah

Zone 1: All of Box Elder, Cache, Daggett, Davis, Duchesne, Morgan, Rich, Salt Lake, Summit, Unitah, Utah, Wasatch, and Weber Counties, and that part of Toole County north of I–80.

Zone 2: The remainder of Utah.

Washington

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Mallard Management Unit: Same as East Zone.

West Zone: All areas to the west of the East Zone.

Wyoming

Snake River Zone: Beginning at the south boundary of Yellowstone National Park and the Continental Divide; south along the Continental Divide to Union Pass and the Union Pass Road (U.S.F.S. Road 600); west and south along the Union Pass Road to U.S.F.S. Road 605; south along U.S.F.S. Road 605 to the Bridger-Teton National Forest boundary; along the national forest boundary to the Idaho State line; north along the Idaho State line to the south boundary of Yellowstone National Park; east along the Yellowstone National Park boundary to the Continental Divide.

Balance of State Zone: Balance of the Pacific Flyway in Wyoming outside the Snake River Zone.

Geese

Atlantic Flyway

Connecticut

AP Unit: Litchfield County and the portion of Hartford County west of a line beginning at the Massachusetts border in Suffield and extending south along Route 159 to its intersection with Route 91 in Hartford, and then extending south along Route 91 to its intersection with the Hartford/Middlesex County line.

AFRP Unit: Starting at the intersection of I–95 and the Quinnipiac River, north on the Quinnipiac River to its intersection with I–91, north on I–91 to I–691, west on I–691 to the Hartford County line, and encompassing the rest of New Haven County and Fairfield County in its entirety.

NAP H–Unit: All of the rest of the State not included in the AP or AFRP descriptions above.

South Zone: Same as for ducks.

North Zone: Same as for ducks.

Maine

Same zones as for ducks.

Maryland

Resident Population (RP) Zone: Garrett, Allegany, Washington, Frederick, and Montgomery Counties; that portion of Prince George's County west of Route 3 and Route 301; that portion of Charles County west of Route 301 to the Virginia State line; and that portion of Carroll County west of Route 31 to the intersection of Route 97, and west of Route 97 to the Pennsylvania line.

AP Zone: Remainder of the State.

Massachusetts

NAP Zone: Central and Coastal Zones (see duck zones).

AP Zone: The Western Zone (see duck zones).

Special Late Season Area: The Central Zone and that portion of the Coastal Zone (see duck zones) that lies north of the Cape Cod Canal, north to the New Hampshire line.

New Hampshire

Same zones as for ducks.

New Jersey

Same zones as for ducks but in addition:

Special Late Season Area: In northern New Jersey, that portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with Route 94: then west along Route 94 to the tollbridge in Columbia; then north along the Pennsylvania State boundary in the Delaware River to the beginning point. In southern New Jersey, that portion of the State within a continuous line that runs west from the Atlantic Ocean at Ship Bottom along Route 72 to Route 70; then west along Route 70 to Route 206; then south along Route 206 to Route 536; then west along Route 536 to Route 322; then west along Route 322 to Route 55; then south along Route 55 to Route 553 (Buck Road); then south along Route 553 to Route 40; then east along Route 40 to route 55; then south along Route 55 to Route 552 (Sherman Avenue); then west along Route 552 to Carmel Road; then south along Carmel Road to Route 49; then east along Route 49 to Route 555; then south along Route 555 to Route 553; then east along Route 553 to Route 649; then north along Route 649 to Route 670; then east along Route 670 to Route 47; then north along Route 47 to Route 548; then east along Route 548 to Route 49; then east along Route 49 to Route 50; then south along Route 50 to Route 9; then south along Route 9 to Route 625 (Sea Isle City Boulevard); then east along Route 625 to the Atlantic Ocean; then north to the beginning point.

New York

Lake Champlain Goose Area: The same as the Lake Champlain Waterfowl Hunting Zone, which is that area of New York State lying east and north of a continuous line extending along Route 11 from the New York-Canada International boundary south to Route 9B, south along Route 9B to Route 9, south along Route 9 to Route 22 south of Keeseville, south along Route 22 to the west shore of South Bay along and around the shoreline of South Bay to Route 22 on the east shore of South Bay, southeast along Route 22 to Route 4, northeast along Route 4 to the New York-Vermont boundary.

Northeast Goose Area: The same as the Northeastern Waterfowl Hunting Zone, which is that area of New York State lying north of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to Interstate 81, south along Interstate Route 81 to Route 31, east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Route 22 at Greenwich Junction, north along Route 22 to Washington County Route 153, east along CR 153 to the New York-Vermont boundary, exclusive of the Lake Champlain Zone.

East Central Goose Area: That area of New York State lying inside of a continuous line extending from Interstate Route 81 in Cicero, east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Route 147 at Kimball Corners, south along Route 147 to Schenectady County Route 40 (West Glenville Road), west along Route 40 to

Touareuna Road, south along Touareuna Road to Schenectady County Route 59, south along Route 59 to State Route 5, east along Route 5 to the Lock 9 bridge, southwest along the Lock 9 bridge to Route 5S, southeast along Route 5S to Schenectady County Route 58, southwest along Route 58 to the NYS Thruway, south along the Thruway to Route 7, southwest along Route 7 to Schenectady County Route 103, south along Route 103 to Route 406, east along Route 406 to Schenectady County Route 99 (Windy Hill Road), south along Route 99 to Dunnsville Road, south along Dunnsville Road to Route 397, southwest along Route 397 to Route 146 at Altamont, west along Route 146 to Albany County Route 252, northwest along Route 252 to Schenectady County Route 131, north along Route 131 to Route 7, west along Route 7 to Route 10 at Richmondville, south on Route 10 to Route 23 at Stamford, west along Route 23 to Route 7 in Oneonta, southwest along Route 7 to Route 79 to Interstate Route 88 near Harpursville, west along Route 88 to Interstate Route 81, north along Route 81 to the point of beginning.

West Central Goose Area: That area of New York State lying within a continuous line beginning at the point where the northerly extension of Route 269 (County Line Road on the Niagara-Orleans County boundary) meets the International boundary with Canada, south to the shore of Lake Ontario at the eastern boundary of Golden Hill State Park, south along the extension of Route 269 and Route 269 to Route 104 at Jeddo, west along Route 104 to Niagara County Route 271, south along Route 271 to Route 31E at Middleport, south along Route 31E to Route 31, west along Route 31 to Griswold Street, south along Griswold Street to Ditch Road, south along Ditch Road to Foot Road, south along Foot Road to the north bank of Tonawanda Creek, west along the north bank of Tonawanda Creek to Route 93, south along Route 93 to Route 5, east along Route 5 to Crittenden-Murrays Corners Road, south on Crittenden-Murrays Corners Road to the NYS Thruway, east along the Thruway 90 to Route 98 (at Thruway Exit 48) in Batavia, south along Route 98 to Route 20, east along Route 20 to Route 19 in Pavilion Center, south along Route 19 to Route 63, southeast along Route 63 to Route 246, south along Route 246 to Route 39 in Perry, northeast along Route 39 to Route 20A, northeast along Route 20A to Route 20, east along Route 20 to Route 364 (near Canandaigua), south and east along Route 364 to Yates County Route 18 (Italy Valley Road), southwest along Route 18 to Yates County Route 34, east along Route 34 to Yates County Route 32, south along Route 32 to Steuben County Route 122, south along Route 122 to Route 53, south along Route 53 to Steuben County Route 74, east along Route 74 to Route 54A (near Pulteney), south along Route 54A to Steuben County Route 87, east along Route 87 to Steuben County Route 96, east along Route 96 to Steuben County Route 114, east along Route 114 to Schuyler County Route 23, east and southeast along Route 23 to Schuyler County Route 28, southeast along Route 28 to Route 409 at Watkins Glen, south along Route 409 to Route 14, south along Route 14 to Route 224 at Montour Falls, east along Route 224 to Route 228 in Odessa, north along Route 228 to Route 79 in Mecklenburg, east along Route 79 to Route 366 in Ithaca, northeast along Route 366 to Route 13, northeast along Route 13 to Interstate Route 81 in Cortland, north along Route 81 to the north shore of the Salmon River to shore of Lake Ontario, extending generally northwest in a straight line to the nearest point of the International boundary with Canada, south and west along the International boundary to the point of beginning.

Hudson Valley Goose Area: That area of New York State lying within a continuous line extending from Route 4 at the New York-Vermont boundary, west and south along Route 4 to Route 149 at Fort Ann, west on Route 149 to Route 9, south along Route 9 to Interstate Route 87 (at Exit 20 in Glens Falls), south along Route 87 to Route 29, west along Route 29 to Route 147 at Kimball Corners, south along Route 147 to Schenectady County Route 40 (West Glenville Road), west along Route 40 to Touareuna Road, south along Touareuna Road to Schenectady County Route 59, south along Route 59 to State Route 5, east along Route 5 to the Lock 9 bridge, southwest along the Lock 9 bridge to Route 5S, southeast along Route 5S to Schenectady County Route 58, southwest along Route 58 to the NYS Thruway, south along the Thruway to Route 7, southwest along Route 7 to Schenectady County Route 103, south along Route 103 to Route 406, east along Route 406 to Schenectady County Route 99 (Windy Hill Road), south along Route 99 to Dunnsville Road, south along Dunnsville Road to Route 397, southwest along Route 397 to Route 146 at Altamont, southeast along Route 146 to Main Street in Altamont, west along Main Street to Route 156, southeast along Route 156 to Albany County Route 307, southeast along Route 307 to Route 85A, southwest along Route 85A to Route 85, south along Route 85 to Route 443, southeast along Route 443 to Albany County Route 301 at Clarksville, southeast along Route 301 to Route 32, south along Route 32 to Route 23 at Cairo, west along Route 23 to Joseph Chadderdon Road, southeast along Joseph Chadderdon Road to Hearts Content Road (Greene County Route 31), southeast along Route 31 to Route 32, south along Route 32 to Greene County Route 23A, east along Route 23A to Interstate Route 87 (the NYS Thruway), south along Route 87 to Route 28 (Exit 19) near Kingston, northwest on Route 28 to Route 209, southwest on Route 209 to the New York-Pennsylvania boundary, southeast along the New York-Pennsylvania boundary to the New York-New Jersey boundary, southeast along the New York-New Jersey boundary to Route 210 near Greenwood Lake, northeast along Route 210 to Orange County Route 5, northeast along Orange County Route 5 to Route 105 in the Village of Monroe, east and north along Route 105 to Route 32, northeast along Route 32 to Orange County Route 107 (Quaker Avenue), east along Route 107 to Route 9W, north along Route 9W to the south bank of Moodna Creek, southeast along the south bank of Moodna Creek to the New Windsor-Cornwall town boundary, northeast along the New Windsor-Cornwall town boundary to the Orange-Dutchess County boundary (middle of the Hudson River), north along the county boundary to Interstate Route 84, east along Route 84 to the Dutchess-Putnam County boundary, east along the county boundary to the New York-Connecticut boundary, north along the New York-Connecticut boundary to the New York-Massachusetts boundary, north along the New York-Massachusetts boundary to the New York-Vermont boundary, north to the point of beginning.

Eastern Long Island Goose Area (NAP High Harvest Area): That area of Suffolk County lying east of a continuous line extending due south from the New York-Connecticut boundary to the northernmost end of Roanoke Avenue in the Town of Riverhead; then south on Roanoke Avenue (which becomes County Route 73) to State Route 25; then west on Route 25 to Peconic Avenue; then south on Peconic Avenue to County Route (CR) 104 (Riverleigh Avenue); then south on CR 104 to CR 31 (Old Riverhead Road); then south on CR 31 to Oak Street; then south on Oak Street to Potunk Lane; then west on Stevens Lane; then south on Jessup Avenue (in Westhampton Beach) to Dune Road (CR 89); then due south to international waters.

Western Long Island Goose Area (RP Area): That area of Westchester County and its tidal waters southeast of Interstate Route 95 and that area of Nassau and Suffolk Counties lying west of a continuous line extending due south from the New York-Connecticut boundary to the northernmost end of the Sunken Meadow State Parkway; then south on the Sunken Meadow Parkway to the Sagtikos State Parkway; then south on the Sagtikos Parkway to the Robert Moses State Parkway; then south on the Robert Moses Parkway to its southernmost end; then due south to international waters.

Central Long Island Goose Area (NAP Low Harvest Area): That area of Suffolk County lying between the Western and Eastern Long Island Goose Areas, as defined above.

South Goose Area: The remainder of New York State, excluding New York City.

Special Late Canada Goose Area: That area of the Central Long Island Goose Area lying north of State Route 25A and west of a continuous line extending northward from State Route 25A along Randall Road (near Shoreham) to North Country Road, then east to Sound Road and then north to Long Island Sound and then due north to the New York-Connecticut boundary.

North Carolina

SJBP Hunt Zone: Includes the following Counties or portions of Counties: Anson, Cabarrus, Chatham, Davidson, Durham, Halifax (that portion east of NC 903), Montgomery (that portion west of NC 109), Northampton, Richmond (that portion south of NC 73 and west of U.S. 220 and north of U.S. 74), Rowan, Stanly, Union, and Wake.

RP Hunt Zone: Includes the following Counties or portions of Counties: Alamance, Alleghany, Alexander, Ashe, Avery, Beaufort, Bertie (that portion south and west of a line formed by NC 45 at the Washington Co. line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor, U.S. 13 in Windsor to the Hertford Co. line), Bladen, Brunswick, Buncombe, Burke, Caldwell, Carteret, Caswell, Catawba, Cherokee, Clay, Cleveland, Columbus, Craven, Cumberland, Davie, Duplin, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, Granville, Greene, Guilford, Halifax (that portion west of NC 903), Harnett, Haywood, Henderson, Hertford, Hoke, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Martin, Mecklenburg, Mitchell, Montgomery (that portion that is east of NC 109), Moore, Nash, New Hanover, Onslow, Orange, Pamlico, Pender, Person, Pitt, Polk, Randolph, Richmond (all of the county with exception of that portion that is south of NC 73 and west of U.S. 220 and north of U.S. 74), Robeson, Rockingham, Rutherford, Sampson, Scotland, Stokes, Surry, Swain, Transylvania, Vance, Warren, Watauga, Wayne, Wilkes, Wilson, Yadkin, and Yancey.

Northeast Hunt Unit: Includes the following Counties or portions of Counties: Bertie (that portion north and east of a line formed by NC 45 at the Washington County line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor, U.S. 13 in Windsor to the Hertford Co. line), Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

Pennsylvania

Resident Canada Goose Zone: All of Pennsylvania except for SJBP Zone and the area east of route SR 97 from the Maryland State Line to the intersection of SR 194, east of SR 194 to intersection of U.S. Route 30, south of U.S. Route 30 to SR 441, east of SR 441 to SR 743, east of SR 743 to intersection of I–81, east of I–81 to intersection of I–80, and south of I–80 to the New Jersey State line.

SJBP Zone: The area north of I–80 and west of I–79 including in the city of Erie west of Bay Front Parkway to and including the Lake Erie Duck zone (Lake Erie, Presque Isle, and the area within 150 yards of the Lake Erie Shoreline).

AP Zone: The area east of route SR 97 from Maryland State Line to the intersection of SR 194, east of SR 194 to intersection of U.S. Route 30, south of U.S. Route 30 to SR 441, east of SR 441 to SR 743, east of SR 743 to intersection of I–81, east of I–81 to intersection of I–80, south of I–80 to New Jersey State line.

Rhode Island

Special Area for Canada Geese: Kent and Providence Counties and portions of the towns of Exeter and North Kingston within Washington County (see State regulations for detailed descriptions).

South Carolina

Canada Goose Area: Statewide except for the following area:

East of U.S. 301: That portion of Clarendon County bounded to the North by S–14–25, to the East by Hwy 260, and to the South by the markers delineating the channel of the Santee River.

West of U.S. 301: That portion of Clarendon County bounded on the North by S–14–26 extending southward to that portion of Orangeburg County bordered by Hwy 6.

Vermont

Same zones as for ducks.

Virginia

AP Zone: The area east and south of the following line—the Stafford County line from the Potomac River west to Interstate 95 at Fredericksburg, then south along Interstate 95 to Petersburg, then Route 460 (SE) to City of Suffolk, then south along Route 32 to the North Carolina line.

SJBP Zone: The area to the west of the AP Zone boundary and east of the following line: The ''Blue Ridge'' (mountain spine) at the West Virginia-Virginia Border (Loudoun County-Clarke County line) south to Interstate 64 (the Blue Ridge line follows county borders along the western edge of Loudoun-Fauquier-Rappahannock-Madison-Greene-Albemarle and into Nelson Counties), then east along Interstate Rt. 64 to Route 15, then south along Rt. 15 to the North Carolina line.

RP Zone: The remainder of the State west of the SJBP Zone.

Mississippi Flyway

Alabama

Same zones as for ducks, but in addition:

SJBP Zone: That portion of Morgan County east of U.S. Highway 31, north of State Highway 36, and west of U.S. 231; that portion of Limestone County south of U.S. 72; and that portion of Madison County south of Swancott Road and west of Triana Road.

Arkansas

Northwest Zone: Baxter, Benton, Boone, Carroll, Conway, Crawford, Faulkner, Franklin, Johnson, Logan, Madison, Marion, Newton, Perry, Pope, Pulaski, Searcy, Sebastian, Scott, Van Buren, Washington, and Yell Counties.

Illinois

North Zone: That portion of the State north of a line extending west from the Indiana border along Interstate 80 to I–39, south along I–39 to Illinois Route 18, west along Illinois Route 18 to Illinois Route 29, south along Illinois Route 29 to Illinois Route 17, west along Illinois Route 17 to the Mississippi River, and due south across the Mississippi River to the Iowa border.

Central Zone: That portion of the State south of the North Goose Zone line to a line extending west from the Indiana border along I–70 to Illinois Route 4, south along Illinois Route 4 to Illinois Route 161, west along Illinois Route 161 to Illinois Route 158, south and west along Illinois Route 158 to Illinois Route 159, south along Illinois

Route 159 to Illinois Route 3, south along Illinois Route 3 to St. Leo's Road, south along St. Leo's road to Modoc Road, west along Modoc Road to Modoc Ferry Road, southwest along Modoc Ferry Road to Levee Road, southeast along Levee Road to County Route 12 (Modoc Ferry entrance Road), south along County Route 12 to the Modoc Ferry route and southwest on the Modoc Ferry route across the Mississippi River to the Missouri border.

South Zone: Same zones as for ducks.

South Central Zone: Same zones as for ducks.

Indiana

Same zones as for ducks but in addition:

Special Canada Goose Seasons

Late Canada Goose Season Zone: That part of the State encompassed by the following Counties: Steuben, Lagrange, Elkhart, St. Joseph, La Porte, Starke, Marshall, Kosciusko, Noble, De Kalb, Allen, Whitley, Huntington, Wells, Adams, Boone, Hamilton, Madison, Hendricks, Marion, Hancock, Morgan, Johnson, Shelby, Vermillion, Parke, Vigo, Clay, Sullivan, and Greene.

Iowa

Same zones as for ducks.

Kentucky

Western Zone: That portion of the State west of a line beginning at the Tennessee State line at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I–24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana State line.

Pennyroyal/Coalfield Zone: Butler, Daviess, Ohio, Simpson, and Warren Counties and all counties lying west to the boundary of the Western Goose Zone.

Louisiana

Same zones as for ducks.

Michigan

North Zone—Same as North duck zone.

Middle Zone—Same as Middle duck zone.

South Zone—Same as South duck zone.

Tuscola/Huron Goose Management Unit (GMU): Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bay Port Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly along 46th Street to 109th Avenue, westerly along 109th Avenue to I–196 in Casco Township, then northerly along I–196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Special Canada Goose Seasons:

Southern Michigan Late Season Canada Goose Zone: Same as the South Duck Zone excluding Tuscola/Huron Goose Management Unit (GMU), Allegan County GMU, Saginaw County GMU, and Muskegon Wastewater GMU.

Minnesota

Same zones as for ducks but in addition:

Rochester Goose Zone: That part of the State within the following described boundary:

Beginning at the intersection of State Trunk Highway (STH) 247 and County State Aid Highway (CSAH) 4, Wabasha County; thence along CSAH 4 to CSAH 10, Olmsted County; thence along CSAH 10 to CSAH 9, Olmsted County; thence along CSAH 9 to CSAH 22, Winona County; thence along CSAH 22 to STH 74; thence along STH 74 to STH 30; thence along STH 30 to CSAH 13, Dodge County; thence along CSAH 13 to U.S. Highway 14; thence along U.S. Highway 14 to STH 57; thence along STH 57 to CSAH 24, Dodge County; thence along CSAH 24 to CSAH 13, Olmsted County; thence along CSAH 13 to U.S. Highway 52; thence along U.S. Highway 52 to CSAH 12, Olmsted County; thence along CSAH 12 to STH 247; thence along STH 247 to the point of beginning.

Missouri

Same zones as for ducks.

Ohio

Lake Erie Goose Zone: That portion of Ohio north of a line beginning at the Michigan border and extending south along Interstate 75 to Interstate 280, south on Interstate 280 to Interstate 80, and east on Interstate 80 to the Pennsylvania border.

North Zone: That portion of Ohio north of a line beginning at the Indiana border and extending east along Interstate 70 to the West Virginia border excluding the portion of Ohio within the Lake Erie Goose Zone.

South Zone: The remainder of Ohio.

Tennessee

Southwest Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Zone: Lake, Obion, and Weakley Counties and those portions of Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lakes Zone: That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama State line to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky State line.

Wisconsin

Same zones as for ducks but in addition:

Horicon Zone: That portion of the State encompassed by a boundary beginning at the intersection of State 23 and State 73 and moves south along State 73 until the intersection of State 73 and State 60, then moves east along State 60 until the intersection of State 60 and State 83, and then moves north along State 83 until the intersection of State 83 and State 33 at which point it moves east until the intersection of State 33 and U.S. 45, then moves north along U.S. 45 until the intersection of U.S. 45 and State 23, at which point it moves west along State 23 until the intersection of State 23 and State 73.

Exterior Zone: That portion of the State not included in the Horicon Zone.

Mississippi River Subzone: That area encompassed by a line beginning at the intersection of the Burlington Northern & Santa Fe Railway and the Illinois State line in Grant County and extending northerly along the Burlington Northern & Santa Fe Railway to the city limit of Prescott in Pierce

County, then west along the Prescott city limit to the Minnesota State line.

Central Flyway

Colorado (Central Flyway Portion)

Northern Front Range Area: All areas in Boulder, Larimer and Weld Counties from the Continental Divide east along the Wyoming border to U.S. 85, south on U.S. 85 to the Adams County line, and all lands in Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Gilpin, and Jefferson Counties.

North Park Area: Jackson County.

South Park and San Luis Valley Area: All of Alamosa, Chaffee, Conejos, Costilla, Custer, Fremont, Lake, Park, Rio Grande and Teller Counties, and those portions of Saguache, Mineral and Hinsdale Counties east of the Continental Divide.

Remainder: Remainder of the Central Flyway portion of Colorado.

Eastern Colorado Late Light Goose Area: That portion of the State east of Interstate Highway 25.

Montana (Central Flyway Portion)

Zone N: The Counties of Blaine, Carter, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Richland, Roosevelt, Sheridan, Stillwater, Sweet Grass, Valley, Wheatland, and Wibaux.

Zone S: The Counties of Big Horn, Carbon, Custer, Prairie, Rosebud, Treasure, and Yellowstone.

Nebraska

Dark Geese

Niobrara Unit: That area contained within and bounded by the intersection of the South Dakota State line and the eastern Cherry County line, south along the Cherry County line to the Niobrara River, east to the Norden Road, south on the Norden Road to U.S. Hwy 20, east along U.S. Hwy 20 to NE Hwy 14, north along NE Hwy 14 to NE Hwy 59 and County Road 872, west along County Road 872 to the Knox County Line, north along the Knox County Line to the South Dakota State line. Where the Niobrara River forms the boundary, both banks of the river are included in the Niobrara Unit.

East Unit: That area north and east of U.S. 81 at the Kansas-Nebraska State line, north to NE Hwy 91, east to U.S. 275, south to U.S. 77, south to NE 91, east to U.S. 30, east to Nebraska-Iowa State line. *Platte River Unit:* That area north and west of U.S. 81 at the Kansas-Nebraska State line, north to NE Hwy 91, west along NE 91 to NE 11, north to the Holt County line, west along the northern border of Garfield, Loup, Blaine and Thomas Counties to the Hooker County line, south along the Thomas-Hooker County lines to the McPherson County line, east along the south border of Thomas County to the western line of Custer County, south along the Custer-Logan County line to NE 92, west to U.S. 83, north to NE 92, west to NE 61, south along NE 61 to NE 92, west along NE 92 to U.S. Hwy 26, south along U.S. Hwy 26 to Keith County Line, south along Keith County Line to the Colorado State line.

Panhandle Unit: That area north and west of Keith-Deuel County Line at the Nebraska-Colorado State line, north along the Keith County Line to U.S. Hwy 26, west to NE Hwy 92, east to NE Hwy 61, north along NE Hwy 61 to NE Hwy 2, west along NE 2 to the corner formed by Garden-Grant-Sheridan Counties, west along the north border of Garden, Morrill, and Scotts Bluff Counties to the intersection of the Interstate Canal, west to the Wyoming State line.

North-Central Unit: The remainder of the State.

Light Geese

Rainwater Basin Light Goose Area: The area bounded by the junction of NE Hwy 92 and NE Hwy 15, south along NE Hwy 15 to NE Hwy 4, west along NE Hwy 4 to U.S. Hwy 34, west along U.S. Hwy 34 to U.S. Hwy 283, north along U.S. Hwy 283 to U.S. Hwy 30, east along U.S. Hwy 30 to NE Hwy 92, east along NE Hwy 92 to the beginning.

Remainder of State: The remainder portion of Nebraska.

New Mexico (Central Flyway Portion)

Dark Geese

Middle Rio Grande Valley Unit: Sierra, Socorro, and Valencia Counties.

Remainder: The remainder of the Central Flyway portion of New Mexico.

North Dakota

Missouri River Canada Goose Zone: The area within and bounded by a line starting where ND Hwy 6 crosses the South Dakota border; thence north on ND Hwy 6 to I–94; thence west on I–94 to ND Hwy 49; thence north on ND Hwy 49 to ND Hwy 200; thence north on Mercer County Rd. 21 to the section line between sections 8 and 9 (T146N–R87W); thence north on that section line to the southern shoreline to Lake Sakakawea; thence east along the southern shoreline (including Mallard Island) of Lake Sakakawea to U.S. Hwy 83; thence south on U.S. Hwy 83 to ND Hwy 200; thence east on ND Hwy 200 to ND Hwy 41; thence south on ND Hwy 41 to U.S. Hwy 83; thence south on U.S. Hwy 83 to I–94; thence east on I–94 to U.S. Hwy 83; thence south on U.S. Hwy 83 to the South Dakota border; thence west along the South Dakota border to ND Hwy 6.

Rest of State: Remainder of North Dakota.

South Dakota

Canada Geese

Unit 1: The Counties of Campbell, Marshall, Roberts, Day, Clark, Codington, Grant, Hamlin, Deuel, Walworth, that portion of Dewey County north of Bureau of Indian Affairs Road 8, Bureau of Indian Affairs Road 9, and the section of U.S. Highway 212 east of the Bureau of Indian Affairs Road 8 junction, that portion of Potter County east of U.S. Highway 83, that portion of Sully County east of U.S. Highway 83, portions of Hyde, Buffalo, Brule, and Charles Mix Counties north and east of a line beginning at the Hughes-Hyde County line on State Highway 34, east to Lees Boulevard, southeast to the State Highway 34, east 7 miles to 350th Avenue, south to Interstate 90 on 350th Avenue, south and east on State Highway 50 to Geddes, east on 285th Street to U.S. Highway 281, north on U.S. Highway 281 to the Charles Mix-Douglas County boundary, that portion of Bone Homme County north of State Highway 50, that portion of Fall River County west of State Highway 71 and U.S. Highway 385, that portion of Custer County west of State Highway 79 and north of French Creek, McPherson, Edmunds, Kingsbury, Brookings, Lake, Moody, Miner, Faulk, Hand, Jerauld, Douglas, Hutchinson, Turner, Lincoln, Union, Clay, Yankton, Aurora, Beadle, Davison, Hanson, Sanborn, Spink, Brown, Harding, Butte, Lawrence, Meade, Pennington, Shannon, Jackson, Mellette, Todd, Jones, Haakon, Corson, Ziebach, McCook, and Minnehaha Counties.

Unit 2: Remainder of South Dakota.

Unit 3: Bennett County.

Texas

Northeast Goose Zone: That portion of Texas lying east and north of a line beginning at the Texas-Oklahoma border at U.S. 81, then continuing south to Bowie and then southeasterly along U.S. 81 and U.S. 287 to I–35W and I–35 to the juncture with I–10 in San Antonio, then east on I–10 to the Texas-Louisiana border.

Southeast Goose Zone: That portion of Texas lying east and south of a line beginning at the International Toll Bridge at Laredo, then continuing north following I–35 to the juncture with I–10 in San Antonio, then easterly along I–10 to the Texas-Louisiana border.

West Goose Zone: The remainder of the State.

Wyoming (Central Flyway Portion)

Dark Geese

Zone G1: Big Horn, Converse, Hot Springs, Natrona, Park, and Washakie Counties; and Fremont County excluding those portions south or west of the Continental Divide.

Zone G1A: Goshen and Platte Counties.

Zone G2: Campbell, Crook, Johnson, Niobrara, Sheridan, and Weston Counties.

Zone G3: Albany and Laramie Counties; and that portion of Carbon County east of the Continental Divide.

Pacific Flyway

Arizona

North Zone: Game Management Units 1–5, those portions of Game Management Units 6 and 8 within Coconino County, and Game Management Units 7, 9, and 12A.

South Zone: Those portions of Game Management Units 6 and 8 in Yavapai County, and Game Management Units 10 and 12B–45.

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of Interstate 5 with the California-Oregon line; south along Interstate 5 to its junction with Walters Lane south of the town of Yreka; west along Walters Lane to its junction with Easy Street; south along Easy Street to the junction with Old Highway 99; south along Old Highway 99 to the point of intersection with Interstate 5 north of the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to main street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines west along the California-Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Imperial County Special Management Area: The area bounded by a line beginning at Highway 86 and the Navy Test Base Road; south on Highway 86 to the town of Westmoreland; continue through the town of Westmoreland to Route S26; east on Route S26 to Highway 115; north on Highway 115 to Weist Rd.; north on Weist Rd. to Flowing Wells Rd.; northeast on Flowing Wells Rd. to the Coachella Canal; northwest on the Coachella Canal to Drop 18; a straight line from Drop 18 to Frink Rd.; south on Frink Rd. to Highway 111; north on Highway 111 to Niland Marina Rd.; southwest on Niland Marina Rd. to the old Imperial County boat ramp and the water line of the Salton Sea; from the water line of the Salton Sea, a straight line across the Salton Sea to the Salinity Control Research Facility and the Navy Test Base Road; southwest on the Navy Test Base Road to the point of beginning.

Balance-of-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

North Coast Special Management Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Special Management Area: That area bounded by a line beginning at Willows south on I–5 to Hahn Road; easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes; northerly on CA 45 to the junction with CA 162; northerly on CA 45/162 to Glenn; and westerly on CA 162 to the point of beginning in Willows.

Colorado (Pacific Flyway Portion)

West Central Area: Archuleta, Delta, Dolores, Gunnison, LaPlata, Montezuma, Montrose, Ouray, San Juan, and San Miguel Counties and those portions of Hinsdale, Mineral, and Saguache Counties west of the Continental Divide.

State Area: The remainder of the Pacific Flyway Portion of Colorado.

Idaho

Canada Geese, White-fronted Geese, and Brant

Zone 1: All lands and waters within the Fort Hall Indian Reservation, including private in-holdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; Caribou County within the Fort Hall Indian Reservation; and Power County east of State Highway 37 and State Highway 39.

Zone 2: Adams, Bear Lake, Benewah, Blaine, Bonner, Bonneville, Boundary, Butte, Camas, Clark, Clearwater, Custer, Franklin, Fremont, Idaho, Jefferson, Kootenai, Latah, Lemhi, Lewis, Madison, Nez Perce, Oneida, Shoshone, Teton, and Valley Counties; Bingham County within the Blackfoot Reservoir drainage; Caribou County, except the Fort Hall Indian Reservation; and Power County west of State Highway 37 and State Highway 39.

Zone 3: Ada, Boise, Canyon, Cassia, Elmore, Gem, Gooding, Jerome, Lincoln, Minidoka, Owyhee, Payette, Twin Falls, and Washington Counties.

Light Geese

Zone 1: All lands and waters within the Fort Hall Indian Reservation, including private in-holdings; Bannock County; Bingham County east of the west bank of the Snake River, west of the McTucker boat ramp access road, and east of the American Falls Reservoir bluff, except that portion within the Blackfoot Reservoir drainage; Caribou County within the Fort Hall Indian Reservation; and Power County below the American Falls Reservoir bluff, and within the Fort Hall Indian Reservation.

Zone 2: Bingham County west of the west bank of the Snake River, east of the McTucker boat ramp access road, and west of the American Falls Reservoir bluff; Power County, except below the American Falls Reservoir bluff and those lands and waters within the Fort Hall Indian Reservation.

Zone 3: Ada, Boise, Canyon, Cassia, Elmore, Gem, Gooding, Jerome, Lincoln, Minidoka, Owyhee, Payette, Twin Falls, and Washington Counties.

Zone 4: Adams, Bear Lake, Benewah, Blaine, Bonner, Bonneville, Boundary, Butte, Camas, Clark, Clearwater, Custer, Franklin, Fremont, Idaho, Jefferson, Kootenai, Latah, Lemhi, Lewis, Madison, Nez Perce, Oneida, Shoshone, Teton, and Valley Counties; Caribou County, except the Fort Hall Indian Reservation; Bingham County within the Blackfoot Reservoir drainage.

Montana (Pacific Flyway Portion)

East of the Divide Zone: The Pacific Flyway portion of the State located east of the Continental Divide.

West of the Divide Zone: The remainder of the Pacific Flyway portion of Montana.

Nevada

Northeast Zone: All of Elko and White Pine Counties.

Northwest Zone: All of Carson City, Churchill, Douglas, Esmeralda, Eureka, Humboldt, Lander, Lyon, Mineral, Nye, Pershing, Storey, and Washoe Counties.

South Zone: All of Clark and Lincoln County.

New Mexico (Pacific Flyway Portion)

North Zone: The Pacific Flyway portion of New Mexico located north of I–40.

South Zone: The Pacific Flyway portion of New Mexico located south of I–40.

Oregon

Southwest Zone: Those portions of Douglas, Coos, and Curry Counties east of Highway 101, and Josephine and Jackson Counties.

South Coast Zone: Those portions of Douglas, Coos, and Curry Counties west of Highway 101.

Northwest Special Permit Zone: That portion of western Oregon west and north of a line running south from the Columbia River in Portland along I–5 to OR 22 at Salem; then east on OR 22 to the Stayton Cutoff; then south on the Stayton Cutoff to Stayton and due south to the Santiam River; then west along the north shore of the Santiam River to I–5; then south on I–5 to OR 126 at Eugene; then west on OR 126 to Greenhill Road; then south on Greenhill Road to Crow Road; then west on Crow Road to Territorial Hwy; then west on Territorial Hwy to OR 126; then west on OR 126 to Milepost 19; then north to the intersection of the Benton and Lincoln County line; then north along the western boundary of Benton and Polk Counties to the southern boundary of Tillamook County; then west along the Tillamook County boundary to the Pacific Coast.

Lower Columbia/N. Willamette Valley Management Area: Those portions of Clatsop, Columbia, Multnomah, and Washington Counties within the Northwest Special Permit Zone.

Tillamook County Management Area: All of Tillamook County. The following portion of the Tillamook County Management Area is closed to goose hunting beginning at the point where Old Woods Rd crosses the south shores of Horn Creek, north on Old Woods Rd to Sand Lake Rd at Woods, north on Sand Lake Rd to the intersection with McPhillips Dr., due west (~200 yards) from the intersection to the Pacific coastline, south on the Pacific coastline to Neskowin Creek, east along the north shores of Neskowin Creek and then Hawk Creek to Salem Ave, east on Salem Ave in Neskowin to Hawk Ave, east on Hawk Ave to Hwy 101, north on Hwy 101 to Resort Dr., north on Resort Dr. to a point due west of the south shores of Horn Creek at its confluence with the Nestucca River, due east (~80 yards) across the Nestucca River to the south shores of Horn Creek, east along the south shores of Horn Creek to the point of beginning.

Northwest Zone: Those portions of Clackamas, Lane, Linn, Marion, Multnomah, and Washington Counties outside of the Northwest Special Permit Zone and all of Lincoln County.

Eastern Zone: Hood River, Wasco, Sherman, Gilliam, Morrow, Umatilla, Deschutes, Jefferson, Crook, Wheeler, Grant, Baker, Union, and Wallowa Counties.

Harney and Lake County Zone: All of Harney and Lake Counties.

Klamath County Zone: All of Klamath County.

Malheur County Zone: All of Malheur County.

Utah

Northern Utah Zone: That portion of Box Elder County beginning the Weber-Box Elder county line, north along the Box Elder county line to the Utah-Idaho State line; west on this line to Stone, Idaho-Snowville, Utah road; southwest on this road to the Locomotive Springs Wildlife Management Area boundary; west, south, east, and then north along this boundary to the county road; east on the county road, past Monument Point and across Salt Wells Flat, to the intersection with Promontory Road; south on Promontory Road to a point directly west of the northwest corner of the Bear River Migratory Bird Refuge boundary; east along a line to the northwest corner of the Refuge boundary; south and east along the Refuge boundary to the southeast corner of the boundary; northeast along the boundary to the Perry access road; east on the Perry access road to I–15; south on I–15 to the Weber-Box Elder County line.

Wasatch Front Zone: Boundary begins at the Weber-Box Elder county line at I–15; east along Weber county line to US–89; south on US–89 to I–84; east and south and along I–84 to I–80; south along I–80 to US–189; south and west along US–189 to the Utah County line; southeast and then west along this line to I–15; north on I–15 to US–6; west on US–6 to SR–36; north on SR–36 to I–80; north along a line from this intersection to the southern tip of Promontory Point and Promontory Road; east and north along this road to the causeway separating Bear River Bay from Ogden Bay; east on this causeway to the southwest corner of Great Salt Lake Mineral Corporations (GSLMC) west impoundment; north and east along GSLMC's west impoundment to the northwest corner of the impoundment; directly north from this point along an imaginary line to the southern boundary of Bear River Migratory Bird Refuge; east along this southern boundary to the Perry access road; northeast along this road to I–15; south along I–15 to the Weber-Box Elder county line.

Washington County Zone: All of Washington County.

Remainder-of-the-State Zone: The remainder of Utah.

Washington

Area 1: Skagit, Island, and Snohomish Counties.

Area 2A (Southwest Permit Zone): Clark County, except portions south of the Washougal River; Cowlitz County; and Wahkiakum County.

Area 2B (Southwest Permit Zone): Pacific County.

Area 3: All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4: Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5: All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Brant

Pacific Flyway

California

North Coast Zone: Del Norte, Humboldt and Mendocino Counties.

South Coast Zone: Balance of the State.

Washington

Puget Sound Zone: Skagit County.
Coastal Zone: Pacific County.

Swans

Central Flyway

South Dakota: Aurora, Beadle, Brookings, Brown, Brule, Buffalo, Campbell, Clark, Codington, Davison, Deuel, Day, Edmunds, Faulk, Grant, Hamlin, Hand, Hanson, Hughes, Hyde, Jerauld, Kingsbury, Lake, Marshall, McCook, McPherson, Miner, Minnehaha, Moody, Potter, Roberts, Sanborn, Spink, Sully, and Walworth Counties.

Pacific Flyway

Montana (Pacific Flyway Portion)

Open Area: Cascade, Chouteau, Hill, Liberty, and Toole Counties and those portions of Pondera and Teton Counties lying east of U.S. 287–89.

Nevada

Open Area: Churchill, Lyon, and Pershing Counties.

Utah

Open Area: Those portions of Box Elder, Weber, Davis, Salt Lake, and Toole Counties lying west of I–15, north of I–80, and south of a line beginning from the Forest Street exit to the Bear River National Wildlife Refuge boundary; then north and west along the Bear River National Wildlife Refuge boundary to the farthest west boundary of the Refuge; then west along a line to Promontory Road; then north on Promontory Road to the intersection of SR 83; then north on SR 83 to I–84; then north and west on I–84 to State Hwy 30; then west on State Hwy 30 to the Nevada-Utah State line; then south on the Nevada-Utah State line to I–80.

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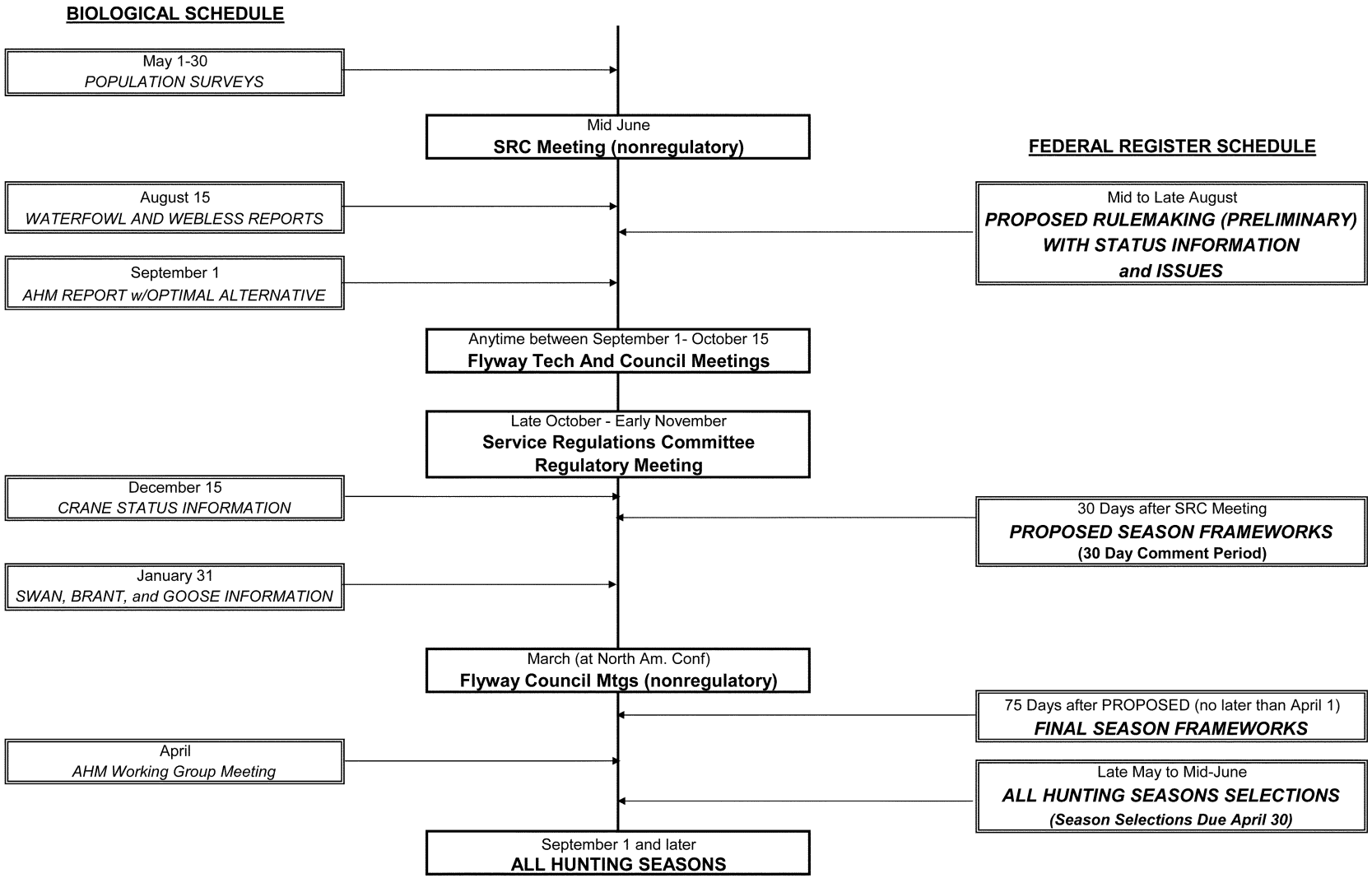

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Part III

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

The $500,000 Deduction Limitation for Remuneration Provided by Certain Health Insurance Providers; Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9694]

RIN 1545–BK88

The $500,000 Deduction Limitation for Remuneration Provided by Certain Health Insurance Providers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations on the application of the $500,000 deduction limitation for remuneration provided by certain health insurance providers under section 162(m)(6) of the Internal Revenue Code (Code). These regulations affect certain health insurance providers providing remuneration that exceeds the deduction limitation.

DATES: *Effective date:* These regulations are effective on September 23, 2014.

Applicability date: For dates of applicability, see § 1.162–31(j).

FOR FURTHER INFORMATION CONTACT: Ilya Enkishev at (202) 317–5600 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final amendments to the Income Tax Regulations (26 CFR part 1) under section 162(m)(6) of the Code. Section 162(m)(6) limits the allowable deduction for remuneration attributable to services performed by applicable individuals to certain health insurance providers that receive premiums from providing health insurance coverage. Section 162(m)(6) was added to the Code by section 9014 of the Patient Protection and Affordable Care Act (ACA) (Pub. L. 111–148, 124 Stat. 119, 868 (2010)).

In general, section 162(m)(6) limits to $500,000 the allowable deduction for remuneration attributable to services performed by an applicable individual for a covered health insurance provider in a taxable year beginning after December 31, 2012, that, but for section 162(m)(6), is otherwise deductible under chapter 1 of the Code (referred to in this preamble and the final regulations as remuneration that is otherwise deductible). Remuneration attributable to services performed for a covered health insurance provider in a disqualified taxable year beginning after December 31, 2009, and before January 1, 2013, that becomes otherwise deductible in a taxable year beginning after December 31, 2012, is also subject to the $500,000 deduction limitation, determined as if the deduction limitation applied to disqualified taxable years beginning after December 31, 2009. If remuneration that is attributable to services performed by an applicable individual for a covered health insurance provider in a disqualified taxable year exceeds $500,000, the amount of the remuneration that exceeds $500,000 is not allowable as a deduction in any taxable year.

On December 23, 2010, the Department of the Treasury (Treasury Department) and the IRS released Notice 2011–2 (2011–1 IRB 260), which provides guidance on certain issues under section 162(m)(6). A notice of proposed rulemaking (REG–106796–12) was published in the **Federal Register** (78 FR 19950) on April 2, 2013 (the proposed regulations). The Treasury Department and the IRS received written comments in response to the notice and the proposed regulations. After consideration of these comments, the Treasury Department adopts the proposed regulations as final regulations, with the modifications set forth in this Treasury decision.

Summary of Comments and Explanation of Modifications

I. Definition of Covered Health Insurance Provider

A. In General

Section 162(m)(6)(C) provides that a covered health insurance provider is any health insurance issuer described in section 162(m)(6)(C)(i) and certain persons that are treated as a single employer with that health insurance issuer, as described in section 162(m)(6)(C)(ii). A person may be a covered health insurance provider for one taxable year, but not be a covered health insurance provider for another taxable year, depending on whether that person meets the requirements to be a covered health insurance provider under section 162(m)(6)(C) for a particular taxable year. These final regulations generally adopt the rules described in the proposed regulations for determining whether a health insurance issuer or any other person is a covered health insurance provider for any taxable year, except as described herein.

B. Health Insurance Issuers

For taxable years beginning after December 31, 2012, section 162(m)(6)(C)(i)(II) provides that a health insurance issuer (as defined in section 9832(b)(2)) is a covered health insurance provider for a taxable year if not less than 25 percent of the gross premiums that it receives from providing health insurance coverage (as defined in section 9832(b)(1)) during the taxable year are from minimum essential coverage (as defined in section 5000A(f)). For taxable years beginning after December 31, 2009 and before January 1, 2013, section 162(m)(6)(C)(i)(I) provides that a health insurance issuer (as defined in section 9832(b)(2)) is a covered health insurance provider for a taxable year if it receives premiums from providing health insurance coverage (as defined in section 9832(b)(1)) during the taxable year.

C. Persons Treated as a Single Employer With a Health Insurance Provider

Section 162(m)(6)(C)(ii) provides that two or more persons that are treated as a single employer under sections 414(b), (c), (m), or (o) are treated as a single employer for purposes of determining whether a person is a covered health insurance provider, except that in applying section 1563(a) for purposes of these subsections, sections 1563(a)(2) and (3) (describing brother-sister controlled groups and combined groups) are disregarded. The final regulations, like the proposed regulations, generally provide that each member of an aggregated group that includes a covered health insurance provider described in section 162(m)(6)(C)(i) at any time during a taxable year is also a covered health insurance provider for purposes of section 162(m)(6), even if the member is not a health insurance issuer and does not provide health insurance coverage. For this purpose, the final regulations, like the proposed regulations, define the term *aggregated group* as a health insurance issuer (as defined in section 9832(b)(2)) and all persons that are treated as a single employer with the health insurance issuer under sections 414(b), (c), (m) or (o), disregarding sections 1563(a)(2) and (3) (with respect to controlled groups of corporations) and § 1.414(c)–(2)(c) and (d) (with respect to trades or businesses under common control).

The proposed regulations include rules for determining whether a member of an aggregated group that is not a health insurance issuer is a covered health insurance provider for a particular taxable year. Under these rules, the parent entity of an aggregated group is generally a covered health insurance provider for its taxable year with which, or in which, ends the taxable year of any health insurance issuer that is a covered health insurance

provider in an aggregated group with the parent entity. Each other member of the parent entity's aggregated group is a covered health insurance provider for its taxable year that ends with, or within, the taxable year of the parent entity during which the parent entity is a covered health insurance provider. The final regulations generally adopt these rules.

The final regulations, like the proposed regulations, provide that, in an aggregated group that is a parent-subsidiary controlled group of corporations (within the meaning of section 414(b)) or a parent-subsidiary group of trades or businesses under common control (within the meaning of section 414(c)), the parent entity is the common parent of the aggregated group.

With respect to an aggregated group that is an affiliated service group within the meaning of section 414(m) or a group described in section 414(o), the final regulations adopt the rules described in the proposed regulations and provide that the parent entity is the health insurance issuer in the aggregated group. If, however, two or more health insurance issuers are members of an aggregated group that is an affiliated service group (within the meaning of section 414(m)) or a group described in section 414(o), then any health insurance issuer in the aggregated group that is designated in writing by the other members of the aggregated group is the parent entity for purposes of section 162(m)(6). If the members of an aggregated group that includes two or more health insurance issuers that is an affiliated service group or group described in section 414(o) fail to designate a parent entity in writing, the members of the group are deemed for all taxable years to have a parent entity with a taxable year that is the calendar year.

In the preamble to the proposed regulations, the Treasury Department and the IRS requested comments on the circumstances under which a new parent entity could be designated, such as when a health insurance issuer that has been designated as the parent entity of an aggregated group ceases to be a member of the aggregated group as a result of a corporate transaction, and any transition rules that may be necessary in such situation. One commenter suggested that the final regulations should provide that when a parent entity (a *predecessor parent entity*) ceases to be a member of an aggregated group under section 414(m) and another health insurance issuer that has the same taxable year as the predecessor parent entity remains in the aggregated group, the remaining members of the aggregated group must designate that health insurance issuer as the new parent entity (the *successor parent entity*). The commenter also suggested that if no health insurance issuer remaining in the aggregated group has the same taxable year as the predecessor parent entity, then the group should be permitted to designate any health insurance issuer in the aggregated group as the successor parent entity. The final regulations generally adopt these suggestions.

The final regulations also provide transition rules for determining when a member of an aggregated group is a covered health insurance provider if, as a result of a change in the identity of the parent entity or for any other reason, the taxable year of the parent entity is less than 12 consecutive months. The final regulations provide that if the taxable year of the parent entity is less than 12 months, then, solely for purposes of determining whether it is a covered health insurance provider for its short taxable year and for purposes of determining whether each other member of the parent entity's aggregated group is a covered health insurance provider for its taxable year ending with or within the taxable year of the parent entity, the taxable year of the parent entity is treated as the 12-month period ending on the last day of its short taxable year. The purpose of this rule is to ensure consistency and continuity in the treatment of members of an aggregated group as covered health insurance providers. Without this rule, certain members of an aggregated group that are generally treated as covered health insurance providers may not be treated as covered health insurance providers for one taxable year because they do not have a taxable year ending with or within the short taxable year of the parent entity.

One commenter suggested that an entity should not be a covered health insurance provider if all of the services performed by its employees and independent contractors are unrelated to the direct or indirect generation of health insurance premiums and if the entity is geographically separate from any entity within the aggregated group that receives premiums from providing health insurance. These final regulations do not adopt this suggestion. Such a rule would be inconsistent with section 162(m)(6)(C)(ii), which provides that all members of an aggregated group that includes a health insurance issuer described in section 162(m)(6)(C)(i) are covered health insurance providers.

D. United States Possessions

One commenter suggested that health insurance providers located in Puerto Rico should not be considered health insurance issuers under section 9832(b)(1) and, therefore, should not be covered health insurance providers under section 162(m)(6)(C)(i). The commenter also suggested that health insurance companies (and similar health insurance providers) located in Puerto Rico should not be considered covered health insurance providers under section 162(m)(6)(C) because the benefits of the ACA do not inure to Puerto Rican insurance companies and because American taxpayers do not subsidize compensation paid by health insurance providers in Puerto Rico through tax deductions. These final regulations do not adopt this suggestion. In regulations issued under section 9010 of the ACA (TD 9643, 78 FR 71476, November 29, 2013), the Treasury Department and the IRS concluded that a health insurance company, health insurance service, or insurance organization may be a health insurance issuer under section 9832(b)(2) even if it is located in Puerto Rico. Accordingly, a health insurance issuer that is otherwise a covered health insurance provider under section 162(m)(6) will not fail to be a covered health insurance provider solely because it is located in Puerto Rico.

E. Self-insurers

These final regulations, like the proposed regulations, provide that an employer is not a covered health insurance provider solely because it maintains a self-insured medical reimbursement plan. For this purpose, the term *self-insured medical reimbursement plan* means a separate written plan for the benefit of employees (which may include former employees) that provides for reimbursement of employee medical expenses referred to in section 105(b) and that does not provide for reimbursement under an individual or group policy of accident or health insurance issued by a licensed insurance company or under an arrangement in the nature of a prepaid health care plan that is regulated under federal or state law in a manner similar to the regulation of insurance companies, and may include a plan maintained by an employee organization described in section 501(c)(9).

One commenter noted that, in addition to providing a self-insured medical reimbursement plan, some employers provide coverage for other

health care costs through an insurance policy (for example, through separate insured coverage for prescription drugs). The commenter requested clarification that an employer that maintains a self-insured medical reimbursement plan will not be a covered health insurance provider solely because the employer provides additional coverage through an insurance policy. The Treasury Department and the IRS agree that this is correct.

F. De Minimis Exception

The final regulations retain the *de minimis* exception described in the proposed regulations with certain clarifications. The final regulations provide that a person that would otherwise be a covered health insurance provider under section 162(m)(6)(C)(i)(II) for any taxable year beginning after December 31, 2012, is not a covered health insurance provider for that taxable year if the premiums received by that person and all other members of its aggregated group from providing health insurance coverage that is minimum essential coverage are less than two percent of the gross revenue of that person and all other members of its aggregated group for that taxable year. For taxable years beginning after December 31, 2009, and before January 1, 2013, a person that would otherwise be a covered health insurance provider under section 162(m)(6)(C)(I) is not a covered health insurance provider for that taxable year if the premiums received by that person and all other members of its aggregated group from providing health insurance coverage are less than two percent of the gross revenue of that person and all other members of its aggregated group for that taxable year.

Commenters suggested that the two-percent threshold for the *de minimis* exception should be increased to a level as high as five percent. In response to Notice 2011–2, which requested comments on the *de minimis* exception, some commenters requested that the threshold not be increased because a higher threshold would allow health insurance issuers that sell significant amounts of health coverage to be exempt from the deduction limit under section 162(m)(6) and thereby provide them with a competitive advantage. After careful consideration of all comments on the *de minimis* exception, the Treasury Department and the IRS have concluded that the two-percent threshold strikes the appropriate balance between exempting persons that receive health insurance premiums that are insignificant in relation to their overall activities and ensuring that persons that sell a significant amount of health insurance are not exempted from the deduction limitation. Accordingly, the final regulations do not adopt the suggestion to increase the *de minimis* threshold.

II. Premiums

A. In General

Section 162(m)(6)(C)(i) provides that a health insurance issuer is a covered health insurance provider for a taxable year only if it receives premiums from providing health insurance coverage (as defined in section 9832(b)(1)). The proposed regulations provide that amounts received under an indemnity reinsurance contract and amounts that are direct service payments are not treated as premiums from providing health insurance coverage for purposes of section 162(m)(6)(C)(i). The final regulations generally adopt the rules set forth in the proposed regulations.

B. Direct Service Payments

A health insurance issuer or other person that receives premiums from providing health insurance coverage may enter into an arrangement with a third party to provide, manage, or arrange for the provision of services by physicians, hospitals, or other healthcare providers. In connection with this arrangement, the health insurance issuer or other person that receives premiums from providing health insurance coverage may pay compensation to the third party in the form of capitated, prepaid, periodic, or other payments, and the third party may bear some or all of the risk that the compensation is insufficient to pay the full cost of providing, managing, or arranging for the provision of services by physicians, hospitals, or other healthcare providers as required under the arrangement. In addition, the third party may be subject to healthcare provider, health insurance, licensing, financial solvency, or other regulation under state insurance law.

The final regulations follow the proposed regulations, and provide that capitated, prepaid, periodic, or other payments (referred to as direct service payments) made by a health insurance issuer or other person that receives premiums from providing health insurance coverage to a third party as compensation for providing, managing, or arranging for the provision of healthcare services by physicians, hospitals, or other healthcare providers are not treated as premiums from providing health insurance coverage for purposes of section 162(m)(6), regardless of whether the third party is subject to healthcare provider, health insurance, licensing, financial solvency, or other similar regulatory requirements under state law. In the preamble to the proposed regulations, the Treasury Department and the IRS requested comments on whether capitated, prepaid, or periodic payments made by a government entity to a third party to provide, manage, or arrange for the provision of services by physicians, hospitals, or other healthcare providers should be treated as premiums from providing health insurance coverage for purposes of section 162(m)(6).

One commenter suggested that payments from a government entity to certain medical care providers that accept risk-based payments in exchange for providing medical care (referred to in this preamble as clinical risk-bearing entities) should not be treated as premiums from providing health insurance coverage. The commenter observed that the term *health insurance coverage* is defined in section 9832(b)(1) as ''benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer.'' The commenter asserted that clinical risk-bearing entities do not provide health insurance coverage under section 9832(b)(1) because they do not issue policies, certificates, or contracts of insurance to the individuals to whom they provide medical care. Specifically, the commenter suggested that capitated payments under the Medicare Shared Savings program or the Medicare Pioneer ACO Program to a clinical risk-bearing entity should not be treated as premiums from providing health insurance coverage for this reason.

The commenter further noted that the definition of the term *health insurance coverage* was added to the Code in 1996 as part of the market reforms under the Health Insurance Portability and Accountability Act (HIPAA) and that virtually identical definitions of the term health insurance coverage were added to the Public Health Service Act (PHSA) and the Employee Retirement Income Security Act (ERISA) at that time. The commenter pointed out that the Secretaries of the Treasury Department, Health and Human Services (HHS), and the Department of Labor (DOL) are required to administer the definitions of the term health insurance coverage consistently in all three statutes pursuant to section 104 of HIPAA.

The commenter also noted that the Centers for Medicare and Medicaid Services (CMS) have published guidance indicating that payments made by a health insurance issuer to a clinical risk-bearing entity may qualify as incurred claims for purposes of determining the issuer's Medical Loss Ratio under certain circumstances. See CMS, CCIIO Technical Guidance (CCIIO 2012–001): Questions and Answers Regarding the Medical Loss Ratio Interim Final Rule (February 10, 2012). According to the commenter, the treatment of payments to a clinical risk-bearing entity as incurred claims suggests that such payments are not premiums from providing health insurance coverage. The commenter urged the Treasury Department and the IRS to clarify that clinical risk-bearing entities are not covered health insurance providers subject to the deduction limitation under section 162(m)(6) unless they offer policies, certificates, or contracts of insurance to enrollees.

Another commenter asserted that Medicaid managed care organizations (MCOs) and providers of Medicare Advantage and Medicare Part D prescription drug plans should not be considered health insurance issuers that provide health insurance coverage for purposes of sections 9832(b)(1) and (2) and 162(m)(6). Like the other commenter, this commenter also pointed to guidance issued by CMS to support its position. See CMS, CCIIO Technical Guidance (CCIIO 2012–002): Questions and Answers Regarding the Medical Loss Ratio Regulation (April 20, 2012). The commenter urged the Treasury Department and the IRS to treat fees paid to companies with healthcare business under governmental healthcare programs, including Medicare and Medicaid, as direct service payments, and not as premiums for purposes of determining whether a person is a health insurance issuer that provides health insurance coverage for purposes of Code section 162(m)(6).

The Treasury Department and the IRS agree with the commenters that a person cannot be a covered health insurance provider under section 162(m)(6) unless it is a health insurance issuer within the meaning of section 9832(b)(2) that receives premiums from providing health insurance coverage within the meaning of section 9832(b)(1). The Treasury Department and the IRS also acknowledge that section 104 of HIPAA generally requires the Treasury Department, HHS, and DOL to interpret consistently the terms *health insurance issuer* and *health insurance coverage,* as used in the Code, the PHSA, and ERISA.

The Treasury Department and the IRS, however, do not adopt the suggestion to provide in the final regulations that clinical risk bearing entities, Medicare and Medicaid providers, and other recipients of payments from government entities in connection with providing benefits under government sponsored health care programs are not covered health insurance providers or that the amounts received by these organizations are not premiums from providing health insurance coverage.

The commenters correctly observe that to be a covered health insurance provider under section 162(m)(6), a person must be a health insurance issuer (as defined in section 9832(b)(2)) that provides health insurance coverage (as defined in section 9832(b)(1)) and meets certain other requirements. If the person is not a health insurance issuer or does not receive premiums from providing health insurance coverage, the person is not a covered health insurance provider.

The definitions of the terms *health insurance coverage* and *health insurance issuer* have significant importance in many sections of the Code, the PHSA, and ERISA. The Treasury Department and the IRS have concluded that it would be inappropriate to provide broad guidance on the interpretation of sections 9832(b)(1) and 9832(b)(2) because it would require full consideration of the possible effects of that guidance on other statutory provisions. The consideration of these wide-ranging implications is outside of the scope of these regulations under section 162(m)(6). However, additional guidance on the meaning of the terms *health insurance issuer* and *health insurance coverage* may be provided in future regulations, notices, revenue rulings, or other guidance of general applicability published in the Internal Revenue Bulletin.

C. Stop-Loss Coverage

Stop-loss coverage allows an employer to self-insure for a set amount of claims costs, with the stop-loss coverage covering all or most of the claims costs that exceed the set amount. Several commenters requested that the final regulations clarify the treatment of stop-loss coverage. Specifically, commenters suggested that payments for stop-loss coverage not be treated as premiums from providing health insurance coverage because stop-loss coverage does not provide insurance coverage for the health risk of an individual or for medical care for an individual. Other commenters suggested that the final regulations adopt the model standards of the National Association of Insurance Commissioners for determining whether payments for stop-loss insurance coverage qualify as premiums from providing health coverage.

The DOL, HHS, and the Treasury Department have expressed concern that employers in small group markets with healthier employees may pursue nominally self-insured arrangements with stop-loss coverage at low attachment points as functionally equivalent alternatives to insured group health plans. The three agencies issued a request for information regarding such practices, with a focus on the prevalence and consequences of stop-loss coverage at low attachment points. 77 FR 25788 (May 1, 2012). Because the scope of stop-loss coverage that may constitute health insurance, if any, has not been determined, premiums under a stop-loss contract will not be considered premiums from providing health insurance coverage for purposes of section 162(m)(6) until such time and to the extent that future guidance addresses the issue of whether and, if so, under what circumstances, stop-loss coverage constitutes health insurance.

D. Captive Insurance Companies

Under the final regulations, as under the proposed regulations, a captive insurance company is a covered health insurance provider if it is a health insurance issuer that is otherwise described in section 162(m)(6)(C). One commenter recommended that premiums received by a captive insurance company or other health insurance issuer that are attributable to coverage provided for current and former employees of members of an aggregated group that includes the captive insurance company or other health insurance issuer should be excluded from the definition of premiums. The commenter also suggested that premiums received by a health insurance issuer for providing health insurance coverage to current and former employees of other related businesses outside of the health insurance issuer's aggregated group should be excluded from the definition of premiums under certain circumstances. The final regulations do not adopt these suggestions.

Section 406 of ERISA generally prohibits transactions between an employee benefit plan and a party in interest, and, under Section 3(14)(C) of ERISA, employers are generally parties in interest with respect to the plans that they sponsor. In addition, Section 3(14)(G) of ERISA provides that entities that are more than 50 percent owned by

employers are also parties in interest. Accordingly, captive insurance companies that are more than 50 percent owned by the sponsor of an employee benefit plan are generally parties in interest, and the payment of premiums to such a captive insurance company to provide insurance to an employee benefit plan maintained by the owner of a captive insurance company would generally be a prohibited transaction and be subject to an excise tax under section 4975.

The DOL, however, has granted a prohibited transaction class exemption and numerous individual prohibited transaction exemptions that apply to captive insurance arrangements in certain circumstances. Under the class exemption, a captive insurance company can directly insure the employee benefit plan risks of a related employer if the captive insurance company and the arrangement meet certain requirements, one of which is that at least 50 percent of the captive insurer's business is unrelated to the employer sponsor of the plan.

The individual exemptions apply to circumstances in which a captive insurance company provides reinsurance to an unrelated insurance company that directly insures the health risks of a plan sponsor's employees. Under this type of arrangement, an employer purchases health insurance for its employees through an unrelated insurance company and pays premiums for that coverage to the unrelated insurance company. The unrelated insurance company then reinsures these health risks through the employer's captive insurance company under an indemnity reinsurance arrangement.

It is the understanding of the Treasury Department and the IRS that employers insuring the health risks of their employees through captive insurance companies generally use the approach outlined in the individual exemptions to avoid engaging in a prohibited transaction and incurring an excise tax under section 4975. Because the amounts received by a captive insurance company under this type of arrangement are solely payments for providing indemnity reinsurance, those payments are not treated as premiums under existing provisions of these regulations, and no special rule is needed for these types of payments. In the case of captive insurance arrangements that rely on the class exemption, the Treasury Department and the IRS have concluded that a special rule for premiums paid by a plan sponsor or its related businesses or their employees would be inappropriate because the captive insurance company would be required under the terms of the class exemption to conduct a significant portion of its insurance business with unrelated third parties.

The commenter acknowledged that captive insurance companies generally follow the approach outlined in the DOL's individual prohibited transaction exemptions but asserted that an exemption for captive insurance companies is nonetheless necessary because the law in this area may change in the future to permit captive insurance companies to receive significant premium payments directly from a related employer. The Treasury Department and the IRS have concluded that a special exception is not necessary at this time for amounts paid to captive insurance companies.

III. Disqualified Taxable Year

Consistent with section 162(m)(6)(B) and the proposed regulations, the final regulations provide that a disqualified taxable year is, with respect to any employer, any taxable year for which the employer is a covered health insurance provider.

IV. Applicable Individual

Section 162(m)(6)(F) provides that, with respect to a covered health insurance provider for a disqualified taxable year, an applicable individual is any individual (i) who is an officer, director, or employee in such taxable year, or (ii) who provides services for, or on behalf of, the covered health insurance provider during the taxable year. The final regulations adopt the proposed regulations and provide that remuneration for services performed by an independent contractor to a covered health insurance provider will not be subject to the deduction limitation under section 162(m)(6) if certain conditions are met. The conditions that must be met under the final regulations for the independent contractor exception to apply are the same as those provided in the proposed regulations.

Section 162(m)(6)(F) defines an applicable individual as an ''individual'' described in that section. Therefore, a corporation, partnership, or other entity that is not a natural person generally would not be an applicable individual. The preamble to the proposed regulations explains that the Treasury Department and the IRS are concerned that covered health insurance providers may attempt to avoid the application of the deduction limitation under section 162(m)(6) by encouraging employees and independent contractors who are natural persons to form small or single-member personal service corporations or other similar entities to provide services that are historically provided by natural persons. In the preamble to the proposed regulations, the Treasury Department and the IRS invited comments regarding how the final regulations might address this potential abuse.

One commenter suggested that if a covered health insurance provider reports remuneration payments on a Form 1099 or W–2 issued directly to a natural person, then that person should be the service provider for purposes of section 162(m)(6). Conversely, if a covered health insurance provider reports remuneration as having been paid to an entity other than a natural person, and that reporting is not found to be incorrect under section 6041, the entity should be the recipient of the remuneration for purposes of section 162(m)(6).

The final regulations do not adopt these suggestions. In general, section 6041 requires information reporting for payments to independent contractors and employees. The purpose of section 6041 is simply to track payments that may constitute gross income to the payee. Section 6041 information reporting does not typically require the payor to look beyond the identity of the recipient of a payment. Accordingly, it would be inappropriate to rely on section 6041 information reporting to identify potentially abusive arrangements.

The Treasury Department and the IRS remain concerned about employment arrangements that may be structured for the purpose of avoiding the deduction limitation under section 162(m)(6). Accordingly, while the final regulations recognize that an applicable individual generally will be a natural person, they provide that the Treasury Department and the IRS may issue guidance in the future identifying situations in which services performed by an entity will be treated as services performed by an individual for purposes of section 162(m)(6).

V. Applicable Individual Remuneration (AIR)

As required under section 162(m)(6)(D), the final regulations, like the proposed regulations, provide that AIR is the aggregate amount that is allowable as a deduction (determined without regard to section 162(m)) with respect to an applicable individual for a disqualified taxable year for remuneration for services performed by that individual (whether or not during the taxable year), except that AIR does not include any amount that is deferred deduction remuneration.

VI. Deferred Deduction Remuneration (DDR)

Section 162(m)(6)(E) and the final regulations, like the proposed regulations, provide that DDR is remuneration that would be AIR for services that an applicable individual performs during a disqualified taxable year but for the fact that it is not deductible until a later taxable year (such as generally occurs, for example, with nonqualified deferred compensation).

VII. Attribution of Remuneration to Services Performed in Taxable Years

The $500,000 deduction limitation under section 162(m)(6) applies to the AIR and DDR that is attributable to services performed by an applicable individual for a covered health insurance provider in a disqualified taxable year. Accordingly, at the time that an amount of AIR or DDR for an applicable individual becomes otherwise deductible (and not before that time), the remuneration must be attributed to services performed by the applicable individual during a particular taxable year or years of a covered health insurance provider.

A. In General

The final regulations, like the proposed regulations, provide that, except as otherwise specifically provided in the regulations, remuneration is attributable to services performed by an applicable individual in the taxable year of the covered health insurance provider in which the applicable individual obtains a legally binding right to the remuneration. In addition, the final regulations, like the proposed regulations, provide that remuneration is not attributable to a taxable year during which the applicable individual is not a service provider. For these purposes, an individual is a service provider of a covered health insurance provider for any period during which the individual is an officer, director, or employee of, or providing services for, or on behalf of, the covered health insurance provider or any member of its aggregated group.

In the preamble to the proposed regulations, the Treasury Department and the IRS requested comments on an appropriate method for attributing increases in an applicable individual's benefit that accrue in taxable years of a covered health insurance provider beginning after the applicable individual ceases providing services (referred to in this preamble as post-termination remuneration) to taxable years during which the applicable individual was a service provider. Comments were specifically requested on the appropriate methods for attributing increases under an account balance plan (defined as a plan described in § 1.409A–1(c)(2)(i)(A) or (B)) and a nonaccount balance plan (defined as a plan described in § 1.409A–1(c)(2)(i)(C)). In the context of nonaccount balance plans, one commenter suggested that each payment to or on behalf of an applicable individual under a nonaccount balance plan should be attributed to taxable years of a covered health insurance provider during which the applicable individual was a service provider in proportion to the increase in the applicable individual's benefit under the plan during those years. For example, if an applicable individual is a service provider for a covered health insurance provider for two years and participates in a deferred compensation plan during that time, and the applicable individual's benefit under the plan increases by an equal amount in both of those years, then 50 percent of each payment under the plan (whenever the payment is made and even if it includes post-termination remuneration) would be attributable to services performed in each of the two taxable years. According to the commenter, this method would provide a relatively simple method for attributing payments, including payments that include post-termination remuneration, to services performed in taxable years of a covered health insurance provider.

The Treasury Department and the IRS agree with the commenter that this approach to the attribution of deferred compensation payments will ease administration for taxpayers and the IRS and will result in a consistent and principled attribution of payments to taxable years during which an applicable individual is a service provider. Although the commenter proposed this attribution method in the context of nonaccount balance plans, the Treasury Department and the IRS have concluded that this approach is an appropriate method for attributing amounts that become otherwise deductible under account balance plans as well. Accordingly, the Treasury Department and the IRS generally adopt this approach to the attribution of payments from account balance plans and nonaccount balance plans.

B. Account Balance Plans

The proposed regulations provide two methods for attributing remuneration under an account balance plan to services performed by an applicable individual in a taxable year of the covered health insurance provider. The proposed regulations refer to these methods as the standard attribution method and the alternative attribution method. Under the standard attribution method, the amount of remuneration attributable to services performed in a taxable year of a covered health insurance provider is equal to the excess of the account balance as of the last day of the taxable year, plus any payments made from that account during the taxable year, over the account balance as of the last day of the immediately preceding taxable year. To the extent that an amount that becomes otherwise deductible under an account balance plan (such as a payment) could be attributed to services performed by an applicable individual in two or more taxable years of a covered health insurance provider, the proposed regulations provide that the amount must be attributed first to services performed by the applicable individual in the earliest taxable year to which the amount could be attributed.

The proposed regulations also provide that, under the standard attribution method, any increases or decreases in an account balance that occur in taxable years of a covered health insurance provider in which an applicable individual is not a service provider must be attributed to taxable years during which the applicable individual is a service provider and has an account balance under the plan. The preamble to the proposed regulations provides that for taxable years beginning in 2013, and thereafter until the Treasury Department and the IRS issue further guidance prescribing the method for attributing post-termination remuneration to these taxable years, post-termination remuneration may be attributed using any reasonable method to taxable years of a covered health insurance provider during which an applicable individual is a service provider and has an account balance under the plan. For this purpose, a method is reasonable only if it is consistent with a reasonable, good faith interpretation of section 162(m)(6) and is applied consistently for all remuneration provided by the covered health insurance provider under substantially similar plans or arrangements.

Under the alternative method described in the proposed regulations, an amount paid to or on behalf of an applicable individual from an account balance plan is attributable to services performed by the applicable individual in the taxable year of a covered health insurance provider in which the principal addition related to the amount

was credited to the applicable individual's account under the plan. To the extent that an amount paid from the plan includes earnings on a principal addition (including post-termination remuneration), the amount is attributable to services performed in the taxable year in which the principal addition was credited to the account.

The final regulations also provide that two methods are available for attributing remuneration under account balance plans. One method, which is different from the methods described in the proposed regulations, is referred to as the account balance ratio method, and the other, which is similar to the alternative method described in the proposed regulations, is referred to as the principal additions method. The final regulations, like the proposed regulations, provide that a covered health insurance provider and each member of its aggregated group must use the same method consistently to attribute remuneration under all of its account balance plans for all taxable years, with certain limited exceptions.

1. Account Balance Ratio Method

The account balance ratio method is based on the proportional attribution principles described previously in section VII.A of this preamble. However, it is similar to the standard attribution method described in the proposed regulations in that the amount attributed to services performed by an applicable individual in a particular taxable year of a covered health insurance provider is based on the increase in the applicable individual's account balance during that year. Under the account balance ratio method, remuneration that becomes otherwise deductible (for example, because it is paid or made available to or for an applicable individual) is attributed to services performed by the applicable individual in each taxable year of the covered health insurance provider in which the applicable individual was a service provider and for which the account balance increased. The amount attributed to each of these taxable years is equal to the total amount that becomes otherwise deductible for the year multiplied by a fraction. The numerator of the fraction is the increase in the account balance for that taxable year, and the denominator of is the sum of all increases in the account balance for all taxable years during which the applicable individual was a service provider.

For this purpose, an increase in an account balance occurs for a taxable year only if the account balance on the last day of the taxable year is greater than the highest account balance on the last day of every prior taxable year. The amount of the increase for any taxable year is the excess of the account balance as of the last day of the taxable year over the highest account balance as of the last day of any prior taxable year.

For example, if an applicable individual's account balance is $10× on the last day of Year 1, $5× on the last day of Year 2, $7× on the last day of Year 3, and $12× on the last day of Year 4, with the fluctuations due solely to changes in investment returns and not due to payments under the plan, the only year in which an increase occurs is Year 4, and the increase is equal to $2× ($12×–$10× (the highest account balance in a prior year)). For post-termination payments, the account balance ratio for each taxable year will generally remain constant, and the same ratios will generally apply to all future payments. The Treasury Department and the IRS anticipate that this method will be significantly easier to administer than the standard attribution method described in the proposed regulations.

Under the account balance ratio method, certain adjustments are made to account balances for in-service payments and for the payment of grandfathered amounts (as described in section XI of this preamble). For this purpose, an in-service payment is any payment made in a taxable year during which an applicable individual is a service provider, and it includes a payment made after an applicable individual permanently ceases to be a service provider (for example, because the applicable individual retires) if the applicable individual was a service provider at any time during the taxable year of the covered health insurance provider in which the payment was made. These adjustments are necessary because an in-service payment that is made from an account balance plan during a year when an applicable individual is accumulating benefits would reduce or eliminate any increase in the year-end account balance that would have occurred in the absence of the in-service payment. The adjustments required for in-service payments and grandfathered amounts are intended to eliminate this effect.

Under the account balance ratio method, if an applicable individual obtains a legally binding right in a taxable year during which the applicable individual is a service provider to an additional contribution under the plan (other than earnings) that will be made in a taxable year in which the applicable individual is not a service provider, the additional contribution is attributed to services performed in the first taxable year preceding the taxable year of the contribution in which the applicable individual was a service provider.

In response to the request for comments in the proposed regulations on an appropriate method for attributing post-termination earnings to taxable years in which an applicable individual is a service provider, one commenter suggested that any increases (or decreases) in an account balance that occur in taxable years in which an applicable individual is not a service provider should be attributed *pro rata* beginning with the taxable year in which the applicable individual begins participating in the plan and ending with the taxable year in which the individual ceases to be a service provider. The final regulations do not adopt this suggestion because it could result in an allocation of earnings largely unrelated to the years in which amounts were credited under the plan as remuneration for services performed.

2. Principal Additions Method

The alternative method described in the proposed regulations provides that a principal addition and earnings (or losses) thereon (including earnings and losses in taxable years during which an applicable individual is not a service provider) are attributed to the taxable year in which the related principal addition is made (including earnings and losses that occur in taxable years during which an applicable individual is not a service provider). The final regulations generally adopt the alternative method with certain modifications and refer to it as the principal additions method.

Under the principal additions method, earnings on a principal addition (including post-termination earnings) are attributed to the taxable year in which an applicable individual is credited with the principal addition under the plan. For example, if a principal addition is credited to the account balance of an applicable individual in the 2015 taxable year, earnings on that principal addition in 2028 are treated as additional remuneration for the 2015 taxable year, and not the 2028 taxable year.

When an amount is paid from an account balance plan, it is attributed under the principal additions method to services performed in the taxable year in which the principal addition to which the amount relates was credited under the plan. The final regulations clarify that the principal additions method is available only for account balance plans that separately account for each principal addition to the plan and any

earnings thereon and that can trace any amount that becomes otherwise deductible under the plan, through separate accounting, to a principal addition made in a taxable year of a covered health insurance provider. The Treasury Department and the IRS understand that certain plans already track contributions of principal additions and the earnings thereon from the time those principal additions are credited under the plan to the time they are paid, generally as part of the administration of the plan's method of compliance with section 409A. The ability to trace payments from the plan to principal additions made in a particular taxable year is integral to the purpose of this attribution method, and the Treasury Department and the IRS believe it is appropriate to limit the use of this method to plans that maintain the separate accounting necessary to trace these amounts.

C. Nonaccount Balance Plans.

The proposed regulations provide that remuneration under a nonaccount balance plan is attributable to services performed by an applicable individual in a taxable year based on the increase in the present value of the applicable individual's benefit under the plan during the taxable year. Under this method, the amount of remuneration attributable to services performed in a taxable year of a covered health insurance provider is equal to the increase (or decrease) in the present value of the future payment or payments due under the plan as of the last day of the taxable year of the covered health insurance provider, increased by any payments made during that year, over the present value of the future payment or payments as of the last day of the covered health insurance provider's preceding taxable year. For purposes of determining the increase (or decrease) in the present value of a future payment or payments, the rules of § 31.3121(v)(2)–1(c)(2) apply. To the extent that an amount that becomes otherwise deductible under a nonaccount balance plan (such as a payment) could be attributed to services performed by an applicable individual in two or more taxable years of a covered health insurance provider, the proposed regulations provide that the amount must be attributed first to services performed by the applicable individual in the earliest taxable year to which the amount could be attributed.

In response to comments, the final regulations adopt two different attribution methods for nonaccount balance plans based on proportional attribution principles and provide that a covered health insurance provider may choose either of these two methods to attribute remuneration to taxable years under a nonaccount balance plan. These two methods are referred to in the final regulations as the present value ratio method and the formula benefit ratio method. A covered health insurance provider and each member of its aggregated group must use the same method consistently to attribute remuneration under all of their nonaccount balance plans consistently for all taxable years, with certain limited exceptions.

1. Present Value Ratio Method.

Under the present value ratio method, each time an amount becomes otherwise deductible, such as when a payment is made under the plan, the amount is attributed to services performed in a taxable year or years of a covered health insurance provider during which an applicable individual was a service provider and for which there was an increase in the present value of payment(s) due under the plan. The amount attributed to each of these taxable years is equal to the total amount that is otherwise deductible multiplied by a fraction. The numerator of the fraction is the increase in the present value of the applicable individual's benefit for the taxable year, and the denominator of the fraction is the sum of all such increases in present value for all taxable years during which the applicable individual was a service provider. In other words, each time an amount becomes otherwise deductible, the amount is attributed proportionately to each taxable year in which the applicable individual was a service provider based on the increase in the present value of the applicable individual's benefit under the plan during that year.

For purposes of the present value ratio method, an increase in the present value of an applicable individual's benefit occurs for a taxable year only if the present value of the benefit on the last day of the covered health insurance provider's taxable year is greater than the present value of the benefit on the last day of every prior taxable year. The amount of the increase for the taxable year is the excess of the present value of the benefit on the last day of the taxable year over the greatest present value of the benefit on the last day of any prior taxable year. If the present value of the applicable individual's benefit as of the last day of the taxable year is less than or equal to the present value of the benefit on the last day of any prior taxable year, there is no increase in the present value for that year for purposes of this calculation. For purposes of determining the present value of a future payment or payments, the rules of § 31.3121(v)(2)–1(c)(2) apply. Like the rules under the account balance ratio method, the final regulations also provide for adjustments in the present value of an applicable individual's benefit to the extent that the present value is reduced by in-service payments or includes grandfathered amounts.

Although the present value ratio method adopts proportional attribution principles for purposes of attributing each payment to services performed by an applicable individual in taxable years of a covered health insurance provider, it is similar to the attribution method for nonaccount balance plans described in the proposed regulations in that amounts paid from the plan are attributed to taxable years based on an increase in the present value of the applicable individual's benefit. The Treasury Department and the IRS believe that the present value ratio method will be significantly easier for both taxpayers and the IRS to administer than the nonaccount balance attribution method described in the proposed regulations. For applicable individuals who begin receiving benefits under a nonaccount balance plan after termination of employment, the present value ratio for each taxable year will generally remain constant, and the payments can be attributed to a taxable year or years simply by multiplying the amount of the payment by the applicable fraction or percentage.

2. Formula Benefit Ratio Method.

In response to the request for comments on the attribution method for nonaccount balance plans set forth in the proposed regulations, one commenter suggested that covered health insurance providers should not be required to determine the present value of an applicable individual's benefit for each taxable year to determine the taxable years to which an amount should be attributed. The commenter observed that plans do not ordinarily determine the present value of benefits on an individual basis before amounts are paid, if ever, and that this calculation would add significant complexity to process for attributing payments to services performed. The commenter suggested that the Treasury Department and the IRS provide an alternative attribution method based on year-over-year increases in the final benefit that an applicable individual is entitled to receive under the plan's benefit formula, without reducing that benefit to its present value. These final

regulations generally adopt this suggestion, with minor modifications, and refer to the method as the formula benefit ratio method.

Under the formula benefit ratio method, remuneration provided to an applicable individual under a nonaccount balance plan is attributable to each taxable year in which the applicable individual provided services and for which there was an increase in the formula benefit. For these purposes, an applicable individual's formula benefit is the benefit that the applicable individual has a legally binding right to receive under the plan in the form that the remuneration being attributed has become otherwise deductible, which will generally be the form in which the remuneration is paid. If a portion of an applicable individual's benefit is paid or becomes otherwise deductible in one form (for example, a lump sum) and another portion of the benefit is paid or becomes otherwise deductible in another form (for example, a life annuity), the applicable individual has two separate formula benefits under the plan, and any increase in the formula benefit is determined separately for each portion of the benefit. If an amount becomes otherwise deductible under a plan but is not paid (for example, if an individual is in constructive receipt of an amount but does not receive payment of that amount), the form in which the benefit will be paid, if the actual form of payment is known, must be used to determine the formula benefit, and, if the actual form of payment is unknown, the formula benefit may be determined using any form of benefit in which the amount may be paid under the plan. In that case, the amount would not be attributed again when it is ultimately paid because it does not become otherwise deductible in the year of actual payment.

Similar to the manner in which amounts are attributed to services provided in taxable years of a covered health insurance provider under the account balance ratio method and the present value ratio method, the amounts attributable under the formula benefit ratio method to each taxable year in which an applicable individual provides services and for which there was an increase in the formula benefit is equal to the amount that becomes otherwise deductible multiplied by a fraction. The numerator of the fraction is the increase in the formula benefit for the taxable year, and the denominator is the sum of all such increases during which the applicable individual was a service provider (which, in most cases, will equal the amount that has become otherwise deductible). Thus, each payment is attributed to taxable years based on the proportion of the increase in the formula benefit under the plan during the taxable year to the total formula benefit to which the applicable individual has a legally binding right when the payment is made.

The amount of the increase in the formula benefit for a taxable year is equal to the excess of the formula benefit to which the individual has a legally binding right under the plan as of the measurement date for that taxable year (generally in the actual form of payment) over the greatest formula benefit to which the applicable individual had a legally binding right under the plan as of any measurement date in any earlier taxable year (in that same form of payment). Special rules apply for purposes of determining whether an increase occurs, and the amount of any increase, in the taxable year in which a payment occurs.

D. Equity-Based Remuneration

The final regulations generally adopt the rules described in the proposed regulations for attributing remuneration resulting from equity-based compensation, which includes stock options, stock appreciation rights (SARs), restricted stock, and restricted stock units (RSUs), with certain modifications made in response to comments.

The proposed regulations provide that remuneration resulting from the exercise of stock options and SARs is attributable on a daily *pro rata* basis to services performed by an applicable individual over the period beginning on the date of grant of the stock option or SAR and ending on the date that the stock option or SAR is exercised, excluding any days on which the applicable individual is not a service provider.

Commenters suggested that, for a stock option or SAR that is subject to a substantial risk of forfeiture, a covered health insurance provider should be permitted to attribute remuneration resulting from the exercise of the stock option or SAR on a daily *pro rata* basis over the period beginning on the date the stock option or SAR is granted and ending on either the date the stock option or SAR is exercised or the date the stock option or SAR is no longer subject to a substantial risk of forfeiture, in either case excluding any days the applicable individual is not a service provider. The commenters explained that permitting attribution over the vesting period would be simpler for some covered health insurance providers because this method is commonly used for other financial accounting and regulatory purposes. The final regulations adopt this suggestion. However, the final regulations also provide that the covered health insurance provider must choose one of the two permissible methods and use it consistently for all stock options or SARs that it issues, unless certain exceptions apply.

One commenter suggested that, instead of attributing equity-based remuneration on a daily *pro rata* basis over the period from the grant date to the date of exercise or the date of vesting, a covered health insurance provider should be permitted to attribute equity-based remuneration entirely to the taxable year in which the equity-based remuneration vests, is exercised, or is otherwise includible in income. Specifically, the commenter suggested that if equity-based remuneration vests in connection with a corporate transaction, a covered health insurance provider should be permitted to attribute pre-transaction appreciation entirely to the year of vesting. The final regulations do not adopt this suggestion. Attributing equity-based remuneration with a multiple-year vesting period to a single taxable year would not result in a reasonable attribution of remuneration to the taxable years in which the services were performed to earn the remuneration, as required by section 162(m)(6)(A).

The final regulations reserve on attribution rules applicable to grants of equity-based remuneration in situations in which the remuneration is determined by reference to equity in an entity treated as a partnership for federal tax purposes or by reference to equity interests in an entity described in § 1.409A–1(b)(5)(iii) (for example a mutual company). However, until the Treasury Department and the IRS issue further guidance on the attribution of this type of remuneration, the rules applicable to stock options, SARs, restricted stock, and RSUs, as described in the final regulations, may be applied by analogy (subject to any applicable rule under the Code (including subchapter K of the Code) affecting the timing, availability or amount of any deduction).

E. Involuntary Separation Pay

The final regulations, like the proposed regulations, provide that involuntary separation pay is attributable to services performed by an applicable individual during the taxable year of a covered health insurance provider in which the involuntary separation from service occurs. Alternatively, involuntary separation pay may be attributable, on a daily *pro*

rata basis, to services performed by the applicable individual beginning on the date that the applicable individual obtains a legally binding right to the involuntary separation pay and ending on the date of the applicable individual's involuntary separation from service with the covered health insurance provider and all members of its aggregated group. For this purpose, involuntary separation pay is defined as remuneration to which an applicable individual has a right to payment solely as a result of an involuntary separation from service. If involuntary separation pay is attributed to services performed in multiple taxable years, each payment of involuntary separation pay must be attributed to the same taxable years in the same proportion that the total amount of separation pay is attributed to those taxable years.

F. Substantial Risk of Forfeiture

The final regulations, like the proposed regulations, provide a two-step process for attributing certain remuneration to taxable years of the covered health insurance provider if the remuneration is subject to a substantial risk of forfeiture for more than one taxable year of a covered health insurance provider. This two-step process applies to amounts that are attributable under the general rule providing that remuneration is attributable to services performed by an applicable individual in the taxable year in which an applicable individual obtains a legally binding right to the remuneration and under the rules for account balance and nonaccount balance plans. Under this two-step process, the remuneration that is subject to the substantial risk of forfeiture is first attributed to the taxable year or years of the covered health insurance provider under the attribution rules that otherwise apply. Then, that remuneration is reattributed on a daily *pro rata* basis over the period that it is subject to a substantial risk of forfeiture (in other words, reattributed evenly over the vesting period).

One commenter suggested that the final regulations make this two-step attribution method optional, rather than mandatory, and permit covered health insurance providers to choose whether to apply this two-step method on a plan-by-plan basis. The final regulations do not adopt this suggestion. Attributing remuneration evenly over the vesting period results in a more accurate matching of remuneration to the taxable years in which the services were performed to earn the remuneration and is consistent with the treatment of equity-based compensation that is subject to a substantial risk of forfeiture.

VII. Application of the $500,000 Deduction Limitation

A. In General

The final regulations generally adopt the rules described in the proposed regulations for applying the $500,000 deduction limitation of section 162(m)(6). The deduction limitation applies to the aggregate AIR and DDR attributable to services performed by an applicable individual for a covered health insurance provider in a disqualified taxable year. Accordingly, if AIR, DDR, or a combination of AIR and DDR, attributable to services performed by an applicable individual for a covered health insurance provider in a disqualified taxable year exceeds $500,000, the amount of the remuneration that exceeds $500,000 is not allowable as a deduction in any taxable year. When the $500,000 deduction limit is applied to an amount of AIR attributable to services performed by an applicable individual in a disqualified taxable year, the deduction limit with respect to that applicable individual for that disqualified taxable year is reduced, but not below zero, by the amount of the AIR to which the deduction limit is applied. If the applicable individual also has an amount of DDR attributable to services performed in that disqualified taxable year that becomes otherwise deductible in a subsequent taxable year, the deduction limit, as reduced, is applied to that amount of DDR in the first taxable year in which that DDR becomes otherwise deductible. If the amount of the DDR that becomes otherwise deductible is less than the reduced deduction limit, then the full amount of the DDR is deductible in that taxable year. To the extent that the amount of the DDR exceeds the reduced deduction limit, the covered health insurance provider's deduction for the DDR is limited to the amount of the reduced deduction limit and the amount of the DDR that exceeds the deduction limit cannot be deducted in any taxable year.

B. Application of Deduction Limitation to Payments

The final regulations generally adopt rules described in the proposed regulations for applying the deduction limitation to payments of remuneration. Any payment to an applicable individual may include remuneration that is attributable to services performed by the applicable individual in one or more taxable years of a covered health insurance provider under the rules set out in the final regulations. For example, remuneration resulting from the vesting of restricted stock that is subject to a substantial risk of forfeiture for five full taxable years of a covered health insurance provider is attributable to services performed by the applicable individual in each of the five years during which the restricted stock was subject to a substantial risk of forfeiture. In that case, a separate deduction limit applies to each portion of the payment that is attributed to services performed in a different disqualified taxable year of the covered health insurance provider. Any portion of the payment that is attributed to a disqualified taxable year is deductible only to the extent that it does not exceed the deduction limit that applies to the applicable individual for that disqualified taxable year, as that deduction limit may have been previously reduced by the amount of any AIR or DDR attributable to services performed in that disqualified taxable year that was previously deductible. The final regulations contain several examples to illustrate how these rules apply to services performed and compensation payments made over multiple taxable years.

VIII. Corporate Transactions

A. In General

A corporation or other person may become a covered health insurance provider as a result of certain transactions such as a merger, acquisition or disposition of assets or stock (or other equity interests), reorganization, consolidation, separation, or other transaction resulting in a change in the composition of an aggregated group (generally referred to in this preamble and the final regulations as a corporate transaction). For example, as a result of the aggregation rules, members of a controlled group of corporations that does not include a health insurance issuer may become covered health insurance providers if a health insurance issuer that is a covered health insurance provider becomes a member of the controlled group.

B. Transition Period Relief

The final regulations, like the proposed regulations, provide a transition period to ease the administrative burden on a person that becomes a covered health insurance provider solely as a result of a corporate transaction. Specifically, the final regulations provide that if a person that is not otherwise a covered health insurance provider would become a covered health insurance provider

solely as a result of a corporate transaction, the person generally is not a covered health insurance provider for the taxable year in which the transaction occurs (referred to in this preamble and the final regulations as transition period relief). The person, however, is a covered health insurance provider for any subsequent taxable year if it is a covered health insurance provider for the taxable year under the generally applicable rules for determining whether a person is a covered health insurance provider. A person that is a covered health insurance provider immediately before a corporate transaction is not eligible for this transition period relief because the person does not become a covered health insurance provider solely as a result of the corporate transaction (but may be eligible for certain transition relief relating to the attribution method it is permitted to use for the taxable year in which the corporate transaction occurs).

One commenter suggested that if a person becomes a covered health insurance provider as a result of a corporate transaction, the person should not be treated as a covered health insurance provider until the first taxable year beginning at least six months after the transaction. The commenter asserted that the additional time is necessary to provide for an adequate transition period. The final regulations do not adopt this suggestion. Section 162(m)(6)(C)(ii) treats the members of an aggregated group as a single employer. The statute does not specifically provide that a person must be treated as a covered health insurance provider for its entire taxable year if it is a member of an aggregated group that includes a health insurance issuer for only a portion of the year. Therefore, the Treasury Department and the IRS have concluded that providing transition relief for corporate transactions during the taxable year that the corporate transaction occurs is consistent with the statute. However, providing transition relief for a taxable year in which a person is a member of an aggregated group that includes a health insurance issuer for its entire taxable year would be inconsistent with the statute.

C. Certain Applicable Individuals

The proposed regulations provide that, in certain circumstances, the deduction limitation under section 162(m)(6) may apply to a person that is not treated as a covered health insurance provider during the transition period. Specifically, the proposed regulations provide that the transition period otherwise applicable to certain members of an aggregated group does not extend to remuneration provided to applicable individuals of a health insurance issuer that is a covered health insurance provider and that is not eligible for the transition period relief because it does not become a covered health insurance provider solely as a result of a corporate transaction.

The final regulations generally adopt this rule, but expand it to include applicable individuals of not only health insurance issuers, but also other employers that would have been covered health insurance providers in the taxable year that the corporate transaction occurs, without regard to the corporate transaction. For example, if a controlled group of corporations that are not covered health insurance providers acquires a health insurance issuer and its non-health insurance issuer subsidiary, both of which are covered health insurance providers before the corporate transaction, the deduction limitation under section 162(m)(6) applies to all remuneration provided to the applicable individuals of the health insurance issuer and the non-health insurance issuer subsidiary, even if the remuneration is provided by a member of the acquiring controlled group that is otherwise eligible for transition period relief during the year of the acquisition.

D. Consistency Rule Relief

As explained previously in this preamble, a covered health insurance provider and all members of its aggregated group that provide remuneration under an account balance plan, a nonaccount balance plan, or through stock options or SARs generally must use the same attribution method for each type of plan (that is, account balance plans, nonaccount balance plans, and stock options or SARs) for all taxable years. As a result of a corporate transaction, however, a covered health insurance provider that uses a particular attribution method for one or more of these types of plans may become a member of an aggregated group that has a member that uses a different attribution method. To maintain consistency within the aggregated group, one or more covered health insurance providers would need to change attribution methods.

As noted in the preamble to the proposed regulations, once remuneration provided to an applicable individual from a plan has been attributed to a taxable year under a particular method (for example, because a payment has been made to the applicable individual), it would be administratively difficult to change the attribution method for amounts that become deductible with respect to that applicable individual in future years and still provide a reasonably accurate attribution of remuneration from that plan to the taxable years in which the applicable individual performed the services to earn the remuneration. In addition, the Treasury Department and the IRS are concerned that the ability to change attribution methods may lead to selective use of methods to maximize deductions. However, recognizing that there may be valid business reasons for changing attribution methods, such as a merger or acquisition, change in compensation structure, or change in accounting method, the Treasury Department and the IRS requested comments on the standards that should apply to determine whether and when an attribution method may be changed, and how that change would apply if deductions for amounts provided under the plan or arrangement have already been taken.

Commenters generally asked for flexibility in applying the consistency rules after a corporate transaction. The final regulations generally adopt this suggestion and provide that, if a covered health insurance provider that uses an attribution method for a particular type of plan (that is, an account balance plan, a nonaccount balance plan, or a stock option or SAR) becomes a member of an aggregated group with one or more covered health insurance providers that used a different attribution method for that type of plan before the corporate transaction, the covered health insurance provider will not violate the otherwise applicable consistency rules for the taxable year in which the corporate transaction takes place if it continues to use the same attribution method for that type of plan that it used before the transaction, even if it is different from the attribution method used by other members of the aggregated group. Further, the final regulations provide that, in this situation, a member of the aggregated group may change its attribution method to be the same as the attribution method used by other members of its aggregated group, subject to limitations or modifications that the Treasury Department and the IRS may provide in future guidance published in the Internal Revenue Bulletin.

One commenter suggested that application of the consistency rules following a corporate transaction should not require a retroactive change in attribution methods. The commenter noted that changing attribution methods retroactively would be administratively difficult. The final regulations generally adopt this suggestion and provide that, if an attribution method has been used

to attribute remuneration provided to an applicable individual under an account balance plan, a nonaccount balance plan, or a stock option or SAR before a corporate transaction, that same method must be used in all future taxable years to attribute any remuneration provided to the applicable individual under the same type of plan to the extent that the applicable individual had a legally binding right to the remuneration as of the date of the corporate transaction.

Because a covered health insurance provider does not need to use an attribution method for amounts that become deductible during a taxable year until it files its tax return for that taxable year, the Treasury Department and the IRS have concluded that the exceptions to the consistency rules described in this section of the preamble and the final regulations will provide covered health insurance providers adequate time to make any adjustments to their attribution methods necessary to comply with the otherwise applicable consistency rules.

E. Application of the De Minimis Rule

One commenter suggested that the final regulations clarify that if a person ceases to be a member of an aggregated group, the *de minimis* exception is applied taking into account only the revenues and premiums of the person for the period during which it was a member of the aggregated group. The final regulations adopt this suggestion.

XI. Grandfathered Amounts Attributable to Services Performed Before January 1, 2010

The deduction limitation under section 162(m)(6) only applies to AIR attributable to services performed by an applicable individual in taxable years beginning after December 31, 2012 and to DDR attributable to services performed by an applicable individual in taxable years beginning after December 31, 2009. It does not apply to remuneration attributable to services performed in taxable years beginning before January 1, 2010.

The proposed regulations provide that for purposes of determining whether remuneration provided under an account balance plan is attributable to services performed in taxable years beginning before January 1, 2010, a covered health insurance provider is required to use the same attribution method that it otherwise uses to attribute remuneration to taxable years, except that any substantial risk of forfeiture is disregarded.

A commenter suggested that a covered health insurance provider be permitted to use any method that is permissible for purposes of attributing remuneration to taxable years for purposes of determining the amount of remuneration that is attributable to services performed before January 1, 2010, even if the method is different from the method it otherwise uses to attribute remuneration to taxable years. The final regulations provide that if a covered health insurance provider uses a method for attributing amounts that become deductible under an account balance plan or a nonaccount balance plan to taxable years beginning after December 31, 2009, it must use that same method consistently for attributing amounts to taxable years beginning before January 1, 2010, except that, if it uses the account balance ratio method to attribute remuneration under an account balance plan to taxable years beginning after December 31, 2009, it may use the principal additions method to attribute amounts to taxable years beginning before January 1, 2010. The final regulations require certain adjustments to account balances for purposes of applying the account balance ratio method if this is done.

For nonaccount balance plans, the proposed regulations provide that the amount attributable to services provided in taxable years beginning before January 1, 2010, equals the present value of the remuneration to which the applicable individual would have been entitled under the plan if the applicable individual voluntarily terminated services without cause on the last day of the first taxable year of the covered health insurance provider beginning before January 1, 2010. The proposed regulations further provide that, for any subsequent taxable year of the covered health insurance provider, this amount may increase to the present value of the benefit the applicable individual actually becomes entitled to receive, in the form and at the time actually paid, determined under the terms of the plan (including applicable limits under the Code) as in effect on the last day of the first taxable year beginning before January 1, 2010, without regard to any further services required by the individual after that date or any other events affecting the amount of, or the entitlement to, benefits (other than the applicable individual's election with respect to the time or form of an available benefit).

The final regulations provide that for purposes of determining whether remuneration provided under a nonaccount balance plan is attributable to services performed in taxable years beginning before January 1, 2010, a covered health insurance provider is required to use the attribution method that it otherwise uses to attribute remuneration to taxable years. Although the amounts attributable to services performed in taxable years beginning before January 1, 2010, are determined differently under the final regulations, the amounts attributable to services performed in taxable years beginning before January 1, 2010, under the formula benefit ratio method generally will be similar to the amounts attributable to those years under the proposed regulations. For equity-based remuneration, the final regulations generally follow the rules described in the proposed regulations and provide that any remuneration resulting from equity-based compensation granted in a taxable year beginning before January 1, 2010, is not subject to the deduction limitation, regardless of whether the equity-based remuneration is subject to a substantial risk of forfeiture during a taxable year beginning after December 31, 2009. Earnings on these grandfathered amounts, including earnings accruing in taxable years beginning after December 31, 2009, are also generally treated as remuneration attributable to services performed in taxable years beginning before January 1, 2010.

One commenter suggested that the final regulations should clarify that the grandfathering rules apply to remuneration provided under all types of arrangements (not only remuneration from account balance plans, nonaccount balance plans, and equity-based remuneration) and that grandfathered amounts be determined based on the attribution rules generally applicable to the arrangement under which remuneration was provided. The final regulations adopt this suggestion.

XII. Transition Rules for Certain DDR

Section 162(m)(6) applies to DDR attributable to services performed in a disqualified taxable year beginning after December 31, 2009 that is otherwise deductible in a taxable year beginning after December 31, 2012. As described in section I.B of this preamble, for taxable years beginning before January 1, 2013, a covered health insurance provider is any health insurance issuer (as defined in section 9832(b)(2)) that receives premiums from providing health insurance coverage (as defined in section 9832(b)(1)) (a pre-2013 covered health insurance provider). For taxable years beginning after December 31, 2012, a covered health insurance provider is any health insurance issuer (as defined in section 9832(b)(2)) that receives at least 25 percent of its gross premiums from providing minimum essential coverage (as defined in section

5000A(f)) (a post-2012 covered health insurance provider). Thus, the definition of the term *covered health insurance provider* is narrower for taxable years beginning after December 31, 2012, than it is for taxable years beginning before January 1, 2013. The proposed regulations include transition rules under which the section 162(m)(6) deduction limitation applies to DDR attributable to services performed in taxable years beginning after December 31, 2009 and before January 1, 2013 only if the covered health insurance provider is a pre-2013 covered health insurance provider for the taxable year to which the DDR is attributable and a post-2012 covered health insurance provider for the taxable year in which that DDR is otherwise deductible. The final regulations retain this transition rule.

XIII. Effective/Applicability Date

The final regulations are effective on September 23, 2014. The final regulations apply to taxable years beginning after September 23, 2014. In addition, taxpayers may rely on these final regulations for taxable years beginning on or before September 23, 2014.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of the regulations is Ilya Enkishev of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their drafting and development.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.162–31 is added to read as follows:

§ 1.162–31 The $500,000 deduction limitation for remuneration provided by certain health insurance providers.

(a) *Scope.* This section sets forth rules regarding the deduction limitation under section 162(m)(6), which provides that a covered health insurance provider's deduction for applicable individual remuneration (AIR) and deferred deduction remuneration (DDR) attributable to services performed by an applicable individual in a disqualified taxable year is limited to $500,000. Paragraph (b) of this section sets forth definitions of the terms used in this section. Paragraph (c) of this section explains the general limitation on deductions under section 162(m)(6). Paragraph (d) of this section sets forth the methods that must be used to attribute AIR and DDR to services performed in one or more taxable years of a covered health insurance provider. Paragraph (e) of this section sets forth rules on how the deduction limit applies to AIR and DDR that is otherwise deductible under chapter 1 of the Internal Revenue Code (Code) but for the deduction limitation under section 162(m)(6) (referred to in this section as remuneration that is otherwise deductible). Paragraph (f) of this section sets forth additional rules for persons participating in certain corporate transactions. Paragraph (g) of this section explains the interaction of section 162(m)(6) with sections 162(m)(1) and 280G. Paragraph (h) of this section sets forth rules for determining the amounts of remuneration that are not subject to the deduction limitation under section 162(m)(6) due to the statutory effective date (referred to in this section as grandfathered amounts). Paragraph (i) of this section sets forth transition rules for DDR that is attributable to services performed in taxable years beginning after December 31, 2009 and before January 1, 2013. Paragraph (j) of this section sets forth the effective and applicability dates of the rules in this section.

(b) *Definitions*—(1) *Health insurance issuer.* For purposes of this section, a *health insurance issuer* is a health insurance issuer as defined in section 9832(b)(2).

(2) *Aggregated group.* For purposes of this section, an *aggregated group* is a health insurance issuer and each other person that is treated as a single employer with the health insurance issuer at any time during the taxable year of the health insurance issuer under sections 414(b) (controlled groups of corporations), 414(c) (partnerships, proprietorships, etc. under common control), 414(m) (affiliated service groups), or 414(o), except that the rules in section 1563(a)(2) and (3) (with respect to corporations) and § 1.414(c)–2(c) and (d) (with respect to trades or businesses under common control) for brother-sister groups and combined groups are disregarded.

(3) *Parent entity*—(i) *In general.* For purposes of this section, a *parent entity* is either—

(A) The common parent of a parent-subsidiary controlled group of corporations (within the meaning of section 414(b)) or a parent-subsidiary group of trades or businesses under common control (within the meaning of section 414(c)) that includes a health insurance issuer, or

(B) the health insurance issuer in an aggregated group that is an affiliated service group (within the meaning of section 414(m)) or a group described in section 414(o).

(ii) *Certain aggregated groups with multiple health insurance issuers*—(A) *In general.* If two or more health insurance issuers are members of an aggregated group that is an affiliated service group (within the meaning of section 414(m)) or group described in section 414(o), the parent entity is the health insurance issuer in the aggregated group that is designated in writing by the other members of the aggregated group to act as the parent entity.

(B) *Successor parent entities.* If a health insurance issuer that is the parent entity of an aggregated group pursuant to paragraph (b)(3)(ii)(A) of this section (a predecessor parent entity) ceases to be a member of the aggregated group (for example, as a result of a corporate transaction) and, after the predecessor parent entity ceases to be a member of the aggregated group, two or more health insurance issuers are members of the aggregated group, the new parent entity (the successor parent entity) is another member of the aggregated group designated in writing by the remaining members of the aggregated group. The successor parent

entity must be a health insurance issuer in the aggregated group that has the same taxable year as the predecessor parent entity; provided, however, that if no health insurance issuer in the aggregated group has the same taxable year as the predecessor parent entity, the members of the aggregated group may designate in writing any other health insurance issuer in the aggregated group to be the parent entity.

(C) *Failure to designate a parent entity.* If the members of an aggregated group that includes two or more health insurance issuers and that is an affiliated service group (within the meaning of section 414(m)) or a group described in section 414(o) fail to designate in writing a health insurance issuer to act as the parent entity of the aggregated group, the parent entity of the aggregated group for all taxable years is deemed to be an entity with a taxable year that is the calendar year (without regard to whether the aggregated group includes or has ever included an entity with a calendar year taxable year) for all purposes under this section for which a parent entity's taxable year is relevant.

(4) *Covered health insurance provider*—(i) *In general.* For purposes of this section and except as otherwise provided in this paragraph (b)(4), a *covered health insurance provider* is—

(A) A health insurance issuer for any of its taxable years beginning after December 31, 2012 in which at least 25 percent of the gross premiums it receives from providing health insurance coverage (as defined in section 9832(b)(1)) are from providing minimum essential coverage (as defined in section 5000A(f)),

(B) a health insurance issuer for any of its taxable years beginning after December 31, 2009 and before January 1, 2013 in which it receives premiums from providing health insurance coverage (as defined in section 9832(b)(1)),

(C) the parent entity of an aggregated group of which one or more health insurance issuers described in paragraphs (b)(4)(i)(A) or (B) of this section are members for the taxable year of the parent entity with which, or in which, ends the taxable year of any such health insurance issuer; however, if the parent entity of an aggregated group is a health insurance issuer described in paragraphs (b)(4)(i)(A) or (B) of this section, that health insurance issuer is a covered health insurance provider for any taxable year that it is otherwise a covered health insurance provider, without regard to whether the taxable year of any other health insurance issuer described in paragraphs (b)(4)(i)(A) or (B) of this section ends with or within its taxable year, and

(D) each other member of an aggregated group of which one or more health insurance issuers described in paragraphs (b)(4)(i)(A) or (B) of this section are members for the taxable year of the other member ending with, or within, the parent entity's taxable year.

(ii) *Parent entities with short taxable years.* If for any reason a parent entity has a taxable year that is less than 12 months (for example, because the taxable year of a predecessor parent entity ends when it ceases to be a member of an aggregated group), then, for purposes of determining whether the parent entity and each other member of the aggregated group is a covered health insurance provider with respect to the parent entity's short taxable year (that is, for purposes of determining whether the taxable year of a health insurance issuer described in paragraph (b)(4)(i)(A) or (B) of this section ends with or within the short taxable year of the parent entity and for purposes of determining whether another member of the aggregated group has a taxable year ending with or within the short taxable year of the parent entity), the taxable year of the parent entity is treated as the 12-month period ending on the last day of the short taxable year. Accordingly, a parent entity is a covered health insurance provider for its short taxable year if it is a health insurance issuer described in paragraph (b)(4)(i)(A) or (B) of this section or if the taxable year of a health insurance issuer described in paragraph (b)(4)(i)(A) or (B) of this section in an aggregated group with the parent entity ends with or within the 12-month period ending on the last day of the parent entity's short taxable year. Similarly, each other member of the parent entity's aggregated group is a covered health insurance provider for its taxable year ending with or within the 12-month period ending on the last day of the parent entity's short taxable year.

(iii) *Predecessor and successor parent entities.* If the parent entity of an aggregated group changes, the members of the aggregated group may be covered health insurance providers based on their relationship to either or both parent entities with respect to the taxable years of the parent entities in which the change occurs.

(iv) *Self-insured plans.* For purposes of this section, a person is not a covered health insurance provider solely because it maintains a self-insured medical reimbursement plan. For this purpose, a self-insured medical reimbursement plan is a separate written plan for the benefit of employees (including former employees) that provides for reimbursement of medical expenses referred to in section 105(b) and does not provide for reimbursement under an individual or group policy of accident or health insurance issued by a licensed insurance company or under an arrangement in the nature of a prepaid health care plan that is regulated under federal or state law in a manner similar to the regulation of insurance companies, and may include a plan maintained by an employee organization described in section 501(c)(9).

(v) *De minimis exception*—(A) *In general.* A health insurance issuer and any member of its aggregated group that would otherwise be a covered health insurance provider under paragraph (b)(4)(i), (ii), or (iii) of this section for a taxable year beginning after December 31, 2012 is not a covered health insurance provider under this section for that taxable year if the premiums received by the health insurance issuer and any other health insurance issuers in its aggregated group from providing health insurance coverage (as defined in section 9832(b)(1)) that constitutes minimum essential coverage (as defined in section 5000A(f)) are less than two percent of the gross revenues of the health insurance issuer and all other members of its aggregated group for that taxable year. A health insurance issuer and any member of its aggregated group that would otherwise be a covered health insurance provider under paragraph (b)(4)(i), (ii), or (iii) of this section for a taxable year beginning after December 31, 2009 and before January 1, 2013 is not a covered health insurance provider for purposes of this section for that taxable year if the premiums received by the health insurance issuer and any other health insurance issuers in its aggregated group from providing health insurance coverage (as defined in section 9832(b)(1)) are less than two percent of the gross revenues of the health insurance issuer and all other members of its aggregated group for that taxable year. In determining whether premiums constitute less than two percent of gross revenues, the amount of gross revenues must be determined in accordance with generally accepted accounting principles. For the definition of the term *premiums,* see paragraph (b)(5) of this section. A person that would be a covered health insurance provider for a taxable year in an aggregated group with a predecessor parent entity and that would also be a covered health insurance provider for that taxable year

in an aggregated group with a successor parent entity is not a covered health insurance provider under the *de minimis* exception only if the aggregated groups of which the person is a member meet the requirements of the *de minimis* exception based on both the taxable year of the predecessor parent entity and the taxable year of the successor parent entity.

(B) *One-year de minimis exception transition period.* If a health insurance issuer or a member of an aggregated group is not a covered health insurance provider for a taxable year solely by reason of the *de minimis* exception described in paragraph (b)(4)(v)(A) of this section, but fails to meet the requirements of the *de minimis* exception described in paragraph (b)(4)(v)(A) of this section for the immediately following taxable year, that health insurance issuer or member of an aggregated group will not be a covered health insurance provider for that immediately following taxable year.

(vi) *Examples.* The following examples illustrate the principles of this paragraph (b)(4). For purposes of these examples, each corporation has a taxable year that is the calendar year, unless the example provides otherwise.

Example 1. (i) Corporations Y and Z are members of an aggregated group under paragraph (b)(2) of this section. Y is a health insurance issuer that is a covered health insurance provider pursuant to paragraph (b)(4)(i)(A) of this section and receives premiums from providing health insurance coverage that is minimum essential coverage during its 2015 taxable year in an amount that is less than two percent of the combined gross revenues of Y and Z for their 2015 taxable years. Z is not a health insurance issuer.

(ii) Y and Z are not covered health insurance providers under paragraph (b)(4) of this section for their 2015 taxable years because they meet the requirements of the *de minimis* exception under paragraph (b)(4)(v)(A) of this section.

Example 2. (i) Corporations V, W, and X are members of an aggregated group under paragraph (b)(2) of this section. V is a health insurance issuer that is a covered health insurance provider pursuant to paragraph (b)(4)(i)(A) of this section, but neither W nor X is a health insurance issuer. W is the parent entity of the aggregated group. V's taxable year ends on December 31, W's taxable year ends on June 30, and X's taxable year ends on September 30. For its taxable year ending December 31, 2016, V receives $3x of premiums from providing minimum essential coverage and has no other revenue. For its taxable year ending June 30, 2017, W has $100x in gross revenue. For its taxable year ending September 30, 2016, X has $60x in gross revenue.

(ii) But for the *de minimis* exception, V (the health insurance issuer) would be a covered health insurance provider for its taxable year ending December 31, 2016; W (the parent entity) would be a covered health insurance provider for its taxable year ending June 30, 2017 (its taxable year with which, or within which, ends the taxable year of the health insurance issuer); and X (the other member of the aggregated group) would be a covered health insurance provider for its taxable year ending on September 30, 2016 (its taxable year ending with, or within, the taxable year of the parent entity). However, the premiums received by V (the health insurance issuer) from providing minimum essential coverage during the taxable year that it would otherwise be a covered health insurance provider under paragraph (b)(4)(i)(A) of this section are less than two percent of the combined gross revenues of V, W, and X for the related taxable years that they would otherwise be covered health insurance providers under paragraph (b)(4)(i) of this section ($3x is less than $3.26x (two percent of $163x)). Therefore, the *de minimis* exception of paragraph (b)(4)(v)(A) of this section applies, and V, W, and X are not covered health insurance providers for these taxable years.

Example 3. (i) The facts are the same as *Example 2,* except that V receives $4x of premiums for providing minimum essential coverage for its taxable year ending December 31, 2016. In addition, the members of the VWX aggregated group were not covered health insurance providers for their taxable years ending December 31, 2015, June 30, 2016, and September 30, 2015, respectively (their immediately preceding taxable years) solely by reason of the *de minimis* exception of paragraph (b)(4)(v)(A) of this section.

(ii) Although the premiums received by the members of the aggregated group from providing minimum essential coverage are more than two percent of the gross revenues of the aggregated group for the taxable years during which the members would otherwise be treated as covered health insurance providers under paragraph (b)(4)(i) of this section ($4x is greater than $3.28x (two percent of $164x)), they were not covered health insurance providers for their immediately preceding taxable years solely because of the *de minimis* exception of paragraph (b)(4)(v)(A) of this section. Therefore, V, W, and X are not covered health insurance providers for their taxable years ending on December 31, 2016, June 30, 2017, and September 30, 2016, respectively, because of the one-year transition period under paragraph (b)(4)(v)(B) of this section. However, the members of the VWX aggregated group will be covered health insurance providers for their subsequent taxable years if they would otherwise be covered health insurance providers for those taxable years under paragraph (b)(4) of this section.

Example 4. (i) Corporations W, X, Y, and Z are members of a controlled group described in section 414(b)) that is an aggregated group under paragraph (b)(2) of this section. W and X are health insurance issuers. Y and Z are not health insurance issuers. W is the parent entity of the aggregated group. W's and Y's taxable years end on December 31; X's taxable year ends on March 31; and Z's taxable year ends on June 30. As a result of a corporate transaction, W is no longer a member of the WXYZ aggregated group as of September 30, 2016, and W's taxable year ends on that date. Following the corporate transaction, X becomes the parent entity of the XYZ aggregated group.

(ii) Because W's taxable year is treated as the 12-month period ending on September 30, 2016, W is the parent entity for X's taxable year ending March 31, 2016, Z's taxable year ending June 30, 2016, and Y's taxable year ending December 31, 2015. Because X's taxable year begins on April 1, 2016 and ends on March 31, 2017, for purposes of paragraph (b)(4) of this section, X is the parent entity for Z's taxable year ending June 30, 2016, Y's taxable year ending December 31, 2016, and W's taxable year ending September 30, 2016.

Example 5. (i) The facts are the same as *Example 4.* In addition, W receives $4x of premiums for providing minimum essential coverage and no other revenue for its taxable year beginning January 1, 2016 and ending September 30, 2016. X receives $2x of premiums for providing minimum essential coverage and has no other revenue for its taxable year ending March 31, 2016. X receives $1x of premiums for providing minimum essential coverage and no other revenue for its taxable year ending March 31, 2017. For its taxable year ending December 31, 2015, Y has $100x in gross revenue. For its taxable year ending December 31, 2016, Y has $200x in gross revenue. For its taxable year ending June 30, 2016, Z has $120x in gross revenue (none of which constitute premiums for providing health insurance coverage that constitutes minimum essential coverage (as defined in section 5000A(f)). W, X, Y, and Z did not qualify for the *de minimis* exception in any prior taxable years.

(ii) For its taxable year ending June 30, 2016, Z does not meet the requirements for the *de minimis* exception described in paragraph (b)(4)(v)(A). Even though Z meets the requirements for the *de minimis* exception with respect to the taxable year of parent entity X ending March 31, 2017 ($5x is less than two percent of $325x), Z does not meet the requirements for the *de minimis* exception based on the premiums and gross revenues of the taxable years of its aggregated group members ending with or within the deemed 12-month taxable year of parent entity W ending September 30, 2016 ($6x is more than two percent of $226x). Therefore, Z is a covered health insurance provider for its June 30, 2016 taxable year.

(iii) For its taxable year ending December 31, 2015, Y does not meet the requirements for the *de minimis* exception described in paragraph (b)(4)(v)(A) ($6x is more than two percent of $226x). For its taxable year ending December 31, 2016, Y meets the requirements for the *de minimis* exception described in paragraph (b)(4)(v)(A) ($5x is less than two percent of $325x). Therefore, Y is a covered health insurance provider for its December 31, 2015 taxable year, but is not a covered health insurance provider for its December 31, 2016 taxable year.

(iv) For its taxable year ending September 30, 2016, W does not meet the requirements

for the *de minimis* exception described in paragraph (b)(4)(v)(A). Even though W meets the requirements for the *de minimis* exception with respect to X's taxable year ending March 31, 2017 ($5x is less than two percent of $325x), W does not meet the requirements for the *de minimis* exception with respect its taxable year ending September 30, 2016 ($6x is more than two percent of $226x). Therefore, W is a covered health insurance provider for its September 30, 2016 taxable year.

(v) For its taxable year ending March 31, 2016, X does not meet the requirements for the *de minimis* exception ($6x is more than two percent of $226x). For its taxable year ending March, 31 2017, X meets the requirements for the *de minimis* exception ($5x is less than two percent of $325x). Therefore, X is a covered health insurance provider for its March 31, 2016 taxable year, but is not a covered health insurance provider for its March 31, 2017 taxable year.

(5) *Premiums*—(i) For purposes of this section, the term *premiums* means premiums written (including premiums written for assumption reinsurance, but reduced by assumption reinsurance ceded (as described in paragraph (b)(5)(ii) of this section), excluding indemnity reinsurance written (as described in paragraph (b)(5)(iii) of this section) and direct service payments (as described in paragraph (b)(5)(iv) of this section), but without reduction for ceding commissions or medical loss ratio rebates, determined in a manner consistent with the requirements for reporting under the Supplemental Health Care Exhibit published by the National Association of Insurance Commissioners or the MLR Annual Reporting Form filed with the Center for Medicare & Medicaid Services' Center for Consumer Information and Insurance Oversight of the U.S. Department of Health and Human Services (or any successor or replacement exhibits or forms).

(ii) *Assumption reinsurance.* For purposes of this paragraph (b)(5), the term *assumption reinsurance* means reinsurance for which there is a novation and the reinsurer takes over the entire risk of loss pursuant to a new contract.

(iii) *Indemnity reinsurance.* For purposes of this paragraph (b)(5), the term *indemnity reinsurance* means reinsurance provided pursuant to an agreement between a health insurance issuer and a reinsuring company under which the reinsuring company agrees to indemnify the health insurance issuer for all or part of the risk of loss under policies specified in the agreement, and the health insurance issuer retains its liability to provide health insurance coverage (as defined in section 9832(b)(1)) to, and its contractual relationship with, the insured.

(iv) *Direct service payments.* For purposes of this paragraph (b)(5), the term *direct service payment* means a capitated, prepaid, periodic, or other payment made by a health insurance issuer or another entity that receives premiums from providing health insurance coverage (as defined in section 9832(b)(1)) to another organization as compensation for providing, managing, or arranging for the provision of healthcare services by physicians, hospitals, or other healthcare providers, regardless of whether the organization that receives the compensation is subject to healthcare provider, health insurance, health plan licensing, financial solvency, or other similar regulatory requirements under state insurance law.

(6) *Disqualified taxable year.* For purposes of this section, the term *disqualified taxable year* means, with respect to any person, any taxable year for which the person is a covered health insurance provider.

(7) *Applicable individual*—(i) *In general.* For purposes of this section, except as provided in paragraph (b)(7)(ii) of this section, the term *applicable individual* means, with respect to any covered health insurance provider for any disqualified taxable year, any individual (or any other person described in guidance of general applicability published in the Internal Revenue Bulletin)—

(A) who is an officer, director, or employee in that taxable year, or

(B) who provides services for or on behalf of the covered health insurance provider during that taxable year.

(ii) *Independent contractors*—Remuneration for services performed by an independent contractor for a covered health insurance provider is subject to the deduction limitation under section 162(m)(6). However, an independent contractor is not an applicable individual with respect to a covered health insurance provider for a disqualified taxable year if each of the following requirements is satisfied:

(A) The independent contractor is actively engaged in the trade or business of providing services to recipients, other than as an employee or as a member of the board of directors of a corporation (or similar position with respect to an entity that is not a corporation);

(B) The independent contractor provides significant services (as defined in § 1.409A–1(f)(2)(iii)) to two or more persons to which the independent contractor is not related and that are not related to one another (as defined in § 1.409A–1(f)(2)(ii)); and

(C) The independent contractor is not related to the covered health insurance provider or any member of its aggregated group, applying the definition of related person contained in § 1.409A–1(f)(2)(ii), subject to the modification that for purposes of applying the references to sections 267(b) and 707(b)(1), the language ''20 percent'' is not used instead of ''50 percent'' each place ''50 percent'' appears in sections 267(b) and 707(b)(1).

(8) *Service provider.* For purposes of this section, the term *service provider* means, with respect to a covered health insurance provider for any period, an individual who is an officer, director, or employee, or who provides services for, or on behalf of, the covered health insurance provider or any member of its aggregated group.

(9) *Remuneration*—(i) *In general.* For purposes of this section, except as provided in paragraph (b)(9)(ii) of this section, the term *remuneration* has the same meaning as the term *applicable employee remuneration,* as defined in section 162(m)(4), but without regard to the exceptions under section 162(m)(4)(B) (remuneration payable on a commission basis), section 162(m)(4)(C) (performance-based compensation), and section 162(m)(4)(D) (existing binding contracts), and the regulations under those sections.

(ii) *Exceptions.* For purposes of this section, remuneration does not include—

(A) A payment made to, or for the benefit of, an applicable individual from or to a trust described in section 401(a) within the meaning of section 3121(a)(5)(A),

(B) A payment made under an annuity plan described in section 403(a) within the meaning of section 3121(a)(5)(B),

(C) A payment made under a simplified employee pension plan described in section 408(k)(1) within the meaning of section 3121(a)(5)(C),

(D) A payment made under an annuity contract described in section 403(b) within the meaning of section 3121(a)(5)(D),

(E) Salary reduction contributions described in section 3121(v)(1), and

(F) Remuneration consisting of any benefit provided to, or on behalf of, an employee if, at the time the benefit is provided, it is reasonable to believe that the employee will be able to exclude the value of the benefit from gross income.

(10) *Applicable Individual Remuneration or AIR.* For purposes of this section, the term *applicable individual remuneration* or *AIR* means, with respect to any applicable individual for any disqualified taxable year, the aggregate amount allowable as a deduction under this chapter for that taxable year (determined without regard

to section 162(m)) for remuneration for services performed by that applicable individual (whether or not in that taxable year). AIR does not include any DDR with respect to services performed during any taxable year. AIR for a disqualified taxable year may include remuneration for services performed in a taxable year before the taxable year in which the deduction for the remuneration is allowable. For example, a discretionary bonus granted and paid to an applicable individual in a disqualified taxable year in recognition of services performed in prior taxable years is AIR for the disqualified taxable year in which the bonus is granted and paid. In addition, a grant of restricted stock in a disqualified taxable year with respect to which an applicable individual makes an election under section 83(b) is AIR for the disqualified taxable year of the covered health insurance provider in which the grant of the restricted stock is made. See paragraph (b)(9)(ii) of this section for certain remuneration that is not treated as AIR for purposes of this section.

(11) *Deferred Deduction Remuneration or DDR.* For purposes of this section, the term *deferred deduction remuneration* or *DDR* means remuneration that would be AIR for services performed in a disqualified taxable year but for the fact that the deduction (determined without regard to section 162(m)(6)) for the remuneration is allowable in a subsequent taxable year. Whether remuneration is DDR is determined without regard to when the remuneration is paid, except to the extent that the timing of the payment affects the taxable year in which the remuneration is otherwise deductible. For example, payments that are otherwise deductible by a covered health insurance provider in an initial taxable year, but are paid to an applicable individual by the 15th day of the third month of the immediately subsequent taxable year of the covered health insurance provider (as described in § 1.404(b)–1T, Q&A–2(b)(1)), are AIR for the initial taxable year (and not DDR) because the deduction for the payments is allowable in the initial taxable year, and not a subsequent taxable year. Except as otherwise provided in paragraph (i) of this section (regarding transition rules for certain DDR attributable to services performed in taxable years beginning before January 1, 2013), DDR that is attributable to services performed in a disqualified taxable year of a covered health insurance provider is subject to the section 162(m)(6) deduction limitation even if the taxable year in which the remuneration is otherwise deductible is not a disqualified taxable year. Similarly, DDR is subject to the section 162(m)(6) deduction limitation regardless of whether an applicable individual is a service provider of the covered health insurance provider in the taxable year in which the DDR is otherwise deductible. However, remuneration that is attributable to services performed in a taxable year that is not a disqualified taxable year is not DDR even if the remuneration is otherwise deductible in a disqualified taxable year. See also paragraph (b)(9)(ii) of this section for certain remuneration that is not treated as DDR for purposes of this section.

(12) *Substantial risk of forfeiture.* For purposes of this section, the term *substantial risk of forfeiture* has the same meaning as provided in § 1.409A–1(d).

(13) *In-service payment.* An *in-service payment* is any amount that is paid with respect to an applicable individual from an account balance plan described in § 1.409A–1(c)(2)(i)(A) or (B) or a nonaccount balance plan described in § 1.409A–1(c)(2)(i)(C) in a taxable year of a covered health insurance provider during which at any time the applicable individual is a service provider (including amounts that became otherwise deductible, but were not paid, in a previous taxable year of a covered health insurance provider). Amounts that are paid in the last year that an applicable individual is a service provider (for example, amounts paid at separation from service) are in-service payments if the applicable individual is a service provider at any time during the taxable year of the covered health insurance provider in which the payment is made.

(14) *Payment year.* For purposes of this section, the term *payment year* means the taxable year of a covered health insurance provider for which remuneration becomes otherwise deductible.

(15) *Measurement date.* For purposes of this section, the term *measurement date* means the last day of the taxable year of a covered health insurance provider.

(c) *Deduction Limitation*—(1) *AIR.* For any disqualified taxable year beginning after December 31, 2012, no deduction is allowed under this chapter for AIR that is attributable to services performed by an applicable individual in that taxable year to the extent that the amount of that remuneration exceeds $500,000.

(2) *DDR.* For any taxable year beginning after December 31, 2012, no deduction is allowed under this chapter for DDR that is attributable to services performed by an applicable individual in any disqualified taxable year beginning after December 31, 2009, to the extent that the amount of such remuneration exceeds $500,000 reduced (but not below zero) by the sum of:

(i) The AIR for that applicable individual for that disqualified taxable year; and

(ii) The portion of the DDR for those services that was subject to the deduction limitation under section 162(m)(6)(A)(ii) and this paragraph (c)(2) in a preceding taxable year, or would have been subject to the deduction limitation under section 162(m)(6)(A)(ii) and this paragraph (c)(2) in a preceding taxable year if section 162(m)(6) was effective for taxable years beginning after December 31, 2009 and before January 1, 2013.

(d) *Services to which remuneration is attributable*—(1) *Attribution to a taxable year*–(i) *In general.* The deduction limitation under section 162(m)(6) applies to AIR and DDR attributable to services performed by an applicable individual in a disqualified taxable year of a covered health insurance provider. When an amount of AIR or DDR becomes otherwise deductible (and not before that time), that remuneration must be attributed to services performed by an applicable individual in a taxable year of the covered health insurance provider in accordance with the rules of this paragraph (d). After the remuneration has been attributed to services performed by an applicable individual in a taxable year of a covered health insurance provider, the rules of paragraph (e) of this section are then applied to determine whether the deduction with respect to the remuneration is limited by section 162(m)(6).

(ii) *Overview.* Paragraphs (d)(1)(iii) through (v) of this section, and paragraph (d)(2) of this section, set forth rules of general applicability for attributing remuneration to services performed by an applicable individual in a taxable year of a covered health insurance provider. Paragraph (d)(3) sets forth two methods for attributing remuneration provided under an account balance plan—the account balance ratio method (described in paragraph (d)(3)(ii) of this section) and the principal additions method (described in paragraph (d)(3)(iii) of this section). Paragraph (d)(4) of this section sets forth two methods for attributing remuneration provided under a nonaccount balance plan—the present value ratio method (described in paragraph (d)(4)(ii) of this section) and

the formula benefit ratio method (described in paragraph (d)(4)(iii) of this section). Paragraph (d)(5) of this section sets forth rules for attributing remuneration resulting from equity-based remuneration (such as stock options, stock appreciation rights, restricted stock, and restricted stock units). Paragraph (d)(6) of this section sets forth rules for attributing remuneration that is involuntary separation pay. Paragraph (d)(7) of this section sets forth rules for attributing remuneration that is received under a reimbursement arrangement, and paragraph (d)(8) of this section sets forth rules for attributing remuneration that results from a split-dollar life insurance arrangement.

(iii) *No attribution to taxable years during which no services are performed or before a legally binding right arises*– (A) *In general.* For purposes of this section, remuneration is not attributable—

(*1*) To a taxable year of a covered health insurance provider ending before the later of the date the applicable individual begins providing services to the covered health insurance provider (or any member of its aggregated group) and the date the applicable individual obtains a legally binding right to the remuneration, or

(*2*) To any other taxable year of a covered health insurance provider during which the applicable individual is not a service provider.

(B) *Attribution of remuneration before the commencement of services or a legally binding right arises.* To the extent that remuneration would otherwise be attributable in accordance with paragraphs (d)(2) through (11) of this section to a taxable year ending before the later of the date an applicable individual begins providing services to a covered health insurance provider (or any member of its aggregated group) and the date the applicable individual obtains a legally binding right to the remuneration, the remuneration is attributed to services performed in the taxable year in which the later of these dates occurs. For example, if an applicable individual obtains a contractual right to remuneration in a taxable year of a covered health insurance provider and the remuneration would otherwise be attributable to that taxable year pursuant to paragraph (d)(2) of this section, but the applicable individual does not begin providing services to the covered health insurance provider until the next taxable year, the remuneration is attributable to the taxable year in which the applicable individual begins providing services.

(iv) *Attribution to 12-month periods.* To the extent that a covered health insurance provider is required to attribute remuneration on a daily *pro rata* basis under this paragraph (d), it may treat any 12-month period as having 365 days (and so may ignore the extra day in leap years).

(v) *Remuneration subject to nonlapse restriction or similar formula.* For purposes of this section, if stock or other property is subject to a nonlapse restriction (as defined in § 1.83–3(h)), or if the remuneration payable to an applicable individual is determined under a formula that, if applied to stock or other property, would be a nonlapse restriction, the amount of the remuneration and the attribution of that remuneration to taxable years must be determined based upon application of the nonlapse restriction or formula. For example, if the earnings or losses on an account under an account balance plan are determined based upon the performance of company stock, the valuation of which is based on a formula that if applied to the stock would be a nonlapse restriction, then that formula must be used consistently for purposes of determining the amount of the remuneration credited to that account balance in taxable years and the attribution of that remuneration to taxable years.

(2) *Legally binding right.* Unless attributable to services performed in a different taxable year pursuant to paragraphs (d)(3) through (11) of this section, remuneration is attributable to services performed in the taxable year of a covered health insurance provider in which an applicable individual obtains a legally binding right to the remuneration. An applicable individual does not have a legally binding right to remuneration if the remuneration may be reduced unilaterally or eliminated by a covered health insurance provider or other person after the services creating the right to the remuneration have been performed. However, if the facts and circumstances indicate that the discretion to reduce or eliminate the remuneration is available or exercisable only upon a condition, or the discretion to reduce or eliminate the remuneration lacks substantive significance, an applicable individual will be considered to have a legally binding right to the remuneration. For this purpose, remuneration is not considered to be subject to unilateral reduction or elimination merely because it may be reduced or eliminated by operation of the objective terms of a plan, such as the application of a nondiscretionary, objective provision creating a substantial risk of forfeiture.

(3) *Account balance plans*—(i) *In general.* When remuneration for services performed by an applicable individual for a covered health insurance provider becomes otherwise deductible (for example, because the amount was paid or made available during that taxable year) from a plan described in § 1.409A–1(c)(2)(i)(A) or (B) (an *account balance plan*), that remuneration must be attributed to services performed by the applicable individual in a taxable year of the covered health insurance provider in accordance with an attribution method described in either paragraph (d)(3)(ii) or (d)(3)(iii) of this section. However, except as provided in paragraphs (d)(3)(ii)(D) and (f)(3) of this section, the covered health insurance provider and all members of its aggregated group must apply the same attribution method under this paragraph (d)(3) consistently for all taxable years beginning after September 23, 2014 for all amounts that become otherwise deductible under all account balance plans.

(ii) *Account balance ratio method*—(A) *In general.* Under this method, remuneration for services performed by an applicable individual for a covered health insurance provider that becomes otherwise deductible under an account balance plan must be attributed to services performed by the applicable individual in each taxable year of the covered health insurance provider ending with or before the payment year during which the applicable individual was a service provider and for which the account balance of the applicable individual increased (determined in accordance with paragraph (d)(3)(ii)(B) and (C) of this section). The amount attributed to each such taxable year is equal to the amount of remuneration that becomes otherwise deductible multiplied by a fraction, the numerator of which is the increase in the applicable individual's account balance under the plan for the taxable year, and the denominator of which is the sum of all such increases for all taxable years during which the applicable individual was a service provider. Thus, remuneration that becomes otherwise deductible under a plan is attributed to a taxable year of the covered health insurance provider in proportion to the increase in the applicable individual's account balance for that taxable year.

(B) *Increase in the account balance.* For purposes of this paragraph (d)(3)(ii), an increase in an account balance under an account balance plan occurs for a taxable year if the account balance as of the measurement date in that taxable year is greater than the account balance as of the measurement date in every

earlier taxable year. In that case, the amount of the increase for that taxable year is equal to the excess of the applicable individual's account balance as of the measurement date for that taxable year over the greatest of the applicable individual's account balances under the plan as of the measurement date in every earlier taxable year. If the applicable individual's account balance as of the measurement date in a taxable year is less than or equal to the applicable individual's account balance as of the measurement date in any earlier taxable year, there is no increase in the account balance for that later taxable year.

(C) *Certain account balance adjustments.* For purposes of determining the account balance on a measurement date under paragraph (d)(3)(ii)(B) of this section, the account balance is adjusted as provided in this paragraph (d)(3)(ii)(C).

(*1*) *In-service payments.* If an in-service payment is made from the account of an applicable individual under an account balance plan in any taxable year of a covered health insurance provider, then the rules of this paragraph (d)(3)(ii)(C)(*1*) apply.

(*i*) Solely for purposes of determining the increase in the applicable individual's account balance as of the measurement date in the payment year (and not for purposes of attributing any amount that becomes otherwise deductible in any later taxable year), the account balance as of the measurement date for that taxable year is increased by the amount of all in-service payments made from the plan during that taxable year.

(*ii*) For purposes of attributing any amount that becomes otherwise deductible under the plan in any taxable year after the payment year of the in-service payment—

(*A*) the account balance as of the measurement date in each taxable year that ends before the taxable year to which the in-service payment is attributed pursuant to this paragraph (d)(3)(ii) is reduced by the sum of the amount of the in-service payment that is attributed to that taxable year and the amount of the in-service payment that is attributed to each taxable year that ends before that taxable year, if any, and

(B) to the extent that the in-service payment includes an amount that was deductible by the covered health insurance provider in a previous taxable year and, therefore, was previously attributable to services performed by the applicable individual in one or more taxable years of the covered health insurance provider (for example, because the amount was made available in a previous taxable year but was not paid at that time), the account balance as of the measurement date for each taxable year that ends before the taxable year to which the in-service payment is attributed pursuant to this paragraph (d)(3)(ii) is reduced by the sum of the amount of the in-service payment previously attributable to that taxable year and the amount of the in-service payment previously attributable to each taxable year that ends before that taxable year, if any.

(*2*) *Certain increases after ceasing to be a service provider.* Any addition (other than income or earnings) to an account balance plan made in a taxable year that begins after an applicable individual ceases to be a service provider (and that ends before the applicable individual becomes a service provider again, if applicable) is added to the account balance of the applicable individual as of the measurement date of the first preceding taxable year in which the applicable individual was a service provider.

(*3*) *Account balance adjustments for grandfathered amounts.* If a covered health insurance provider uses the principal additions method for determining grandfathered amounts for an applicable individual under paragraph (h) of this section, then, for purposes of determining the increase in the applicable individual's account balance, the account balance as of any measurement date is reduced by the amount of any grandfathered amounts otherwise included in the account balance.

(D) *Transition rule for amounts attributed before the applicability date of the final regulations.* Amounts that become otherwise deductible in taxable years beginning before September 23, 2014 may be attributed to services performed in taxable years of a covered health insurance provider under the rules set forth in the proposed regulations. If a covered health insurance provider attributes an amount paid to an applicable individual pursuant to a method permitted under the proposed regulations and then chooses to use the account balance ratio method to attribute amounts that subsequently become otherwise deductible with respect to that applicable individual, then, for purposes of applying the account balance ratio method to attribute any amount that becomes otherwise deductible under the plan after the taxable year in which the last payment was made that was attributed pursuant to the proposed regulations, the account balance as of the measurement date for each taxable year that ends before the taxable year in which the last payment that was attributed pursuant to the proposed regulations is reduced by the sum of the amount previously attributed to that taxable year under the proposed regulations and the amount previously attributable to each taxable year that ends prior to that taxable year under the proposed regulations, if any.

(iii) *Principal additions method*—(A) *In general.* Under this method, remuneration that becomes otherwise deductible under an account balance plan during a payment year must be attributed to services performed by the applicable individual in the taxable year of the covered health insurance provider during which the applicable individual was a service provider and in which the principal addition to which the amount relates is credited under the plan (determined in accordance with paragraph (d)(3)(iii)(B) and (C) of this section). An amount relates to a principal addition if the amount is a payment of the principal addition or earnings on the principal addition, based on a separate accounting of these amounts. The principal additions method described in this paragraph may be used to attribute amounts that become otherwise deductible under an account balance plan only if the covered health insurance provider separately accounts for each principal addition to the plan (and any earnings thereon) and traces each amount that becomes otherwise deductible under the plan to a principal addition made in a taxable year of the covered health insurance provider.

(B) *Principal addition*—(*1*) For purposes of this paragraph (d)(3)(iii), the excess (if any) of the sum of the account balance of an applicable individual in an account balance plan as of the last day of a taxable year and any payments made during the taxable year over the account balance as of the last day of the immediately preceding taxable year, that is not due to earnings or losses (as described in paragraph (d)(3)(iii)(C) of this section), is treated as a principal addition that is credited to the plan in that taxable year if the applicable individual was a service provider during that taxable year. If the applicable individual was not a service provider during that taxable year, the excess described in the preceding sentence is treated as a principal addition that is credited to the plan in accordance with paragraph (d)(3)(iii)(B)(*2*) of this section.

(*2*) *Principal additions after termination of employment.* Any principal addition to an account balance plan made in a taxable year that begins after an applicable individual ceases to

be a service provider (and that ends before the applicable individual becomes a service provider again, if applicable) is treated as a principal addition that is credited in the first preceding taxable year in which the applicable individual was a service provider.

(C) *Earnings.* Whether remuneration constitutes earnings on a principal addition is determined under the principles defining income attributable to an amount taken into account under § 31.3121(v)(2)–1(d)(2). Therefore, for an account balance plan, earnings on an amount deferred generally include an amount credited on behalf of an applicable individual under the terms of the arrangement that reflects a rate of return that does not exceed either the rate of return on a predetermined actual investment (as defined in § 31.3121(v)(2)–1(d)(2)(i)(B)), or, if the income does not reflect the rate of return on a predetermined actual investment, a rate of return that reflects a reasonable rate of interest (as defined in § 31.3121(v)(2)–1(d)(2)(i)(C)). For purposes of this paragraph (d)(3)(iii), the use of a rate of return that is not based on a predetermined actual investment or a reasonable rate of interest generally will result in the treatment of some or all of the remuneration as a principal addition that is attributable to services performed by an applicable individual in a taxable year of a covered health insurance provider in accordance with this paragraph (d)(3)(iii) of this section.

(4) *Nonaccount balance plans*—(i) *In general.* When remuneration for services performed by an applicable individual for a covered health insurance provider becomes otherwise deductible under a plan described in § 1.409A–1(c)(2)(i)(C) (a nonaccount balance plan), that remuneration must be attributed to services performed by the applicable individual in a taxable year of the covered health insurance provider in accordance with the attribution method described in either paragraph (d)(4)(ii) or (d)(4)(iii) of this section. However, except as provided in paragraphs (d)(4)(ii)(D) and (d)(4)(iii)(D) and (f)(3) of this section, the covered health insurance provider and all members of its aggregated group must apply the same attribution method under this paragraph (d)(4) consistently for all taxable years beginning after September 23, 2014 for all amounts that become deductible under all nonaccount balance plans.

(ii) *Present value ratio attribution method*—(A) *In general.* Under this method, remuneration for services performed by an applicable individual for a covered health insurance provider that becomes otherwise deductible under a nonaccount balance plan must be attributed to services performed by the applicable individual in each taxable year of the covered health insurance provider ending with or before the payment year during which the applicable individual was a service provider for which the present value of the future payment(s) to be made to or on behalf of the applicable individual under the plan increased (determined in accordance with paragraph (d)(3)(ii)(B) and (C) of this section). The amount attributed to each such taxable year is equal to the amount of remuneration that becomes otherwise deductible under the plan multiplied by a fraction, the numerator of which is the increase in the present value of the future payment(s) to which the applicable individual has a legally binding right under the plan for the taxable year, and the denominator of which is the sum of all such increases for all taxable years during which the applicable individual was a service provider. Thus, remuneration that becomes otherwise deductible under a plan is attributed to a taxable year of the covered health insurance provider in proportion to the increase in the present value of the future payment(s) under the plan for that taxable year.

(B) *Increase in present value of future payments.* For purposes of this paragraph (d)(4)(ii), for a taxable year of a covered health insurance provider, an increase in the present value of the future payment(s) to which an applicable individual has a legally binding right under a nonaccount balance plan occurs if the present value of the future payment(s) as of the measurement date in the taxable year is greater than the present value of the future payment(s) as of the measurement date in every earlier taxable year. In that case, the amount of the increase for that taxable year is equal to the excess of the present value of the future payment(s) to which the applicable individual has a legally binding right under the plan as of the measurement date for that taxable year over the greatest present value of the future payment(s) to which the applicable individual had a legally binding right under the plan as of the measurement date in every earlier taxable year. If the present value of the future payment(s) as of a measurement date in a taxable year is less than or equal to the present value of the future payment(s) as of the measurement date in any earlier taxable year, then there is no increase in the present value of the future payment(s) to which the applicable individual has a legally binding right under the plan for that later taxable year. For purposes of determining the increase (or decrease) in the present value of a future payment(s) under a nonaccount balance plan, the rules of § 31.3121(v)(2)–1(c)(2) apply (including the requirement that reasonable actuarial assumptions and methods be used).

(C) *Certain present value adjustments.* For purposes of determining the present value of the future payment(s) to which an applicable individual has a legally binding right to receive as of a measurement date under paragraph (d)(4)(ii)(B) of this section, the present value is adjusted as provided in this paragraph (d)(3)(iii)(C).

(*1*) *In-service payments.* If an in-service payment is made to or on behalf of an applicable individual under a nonaccount balance plan in any taxable year of a covered health insurance provider, then the rules of this paragraph (d)(3)(iii)(C)(*1*) apply.

(*i*) Solely for purposes of determining the increase in the present value of the future payment(s) under the plan for the payment year (and not for purposes of attributing any amount that becomes otherwise deductible in any later taxable year), the present value of the future payment(s) under the plan as of the measurement date in the payment year is increased by the amount of any reduction in the present value of the future payment(s) resulting from the in-service payment made from the plan during that taxable year.

(*ii*) For purposes of attributing any amount that becomes otherwise deductible under the plan in any taxable year after the payment year of the in-service payment, the present value of the future payment(s) as of the measurement date for each taxable year that ends before the payment year is reduced by the present value of the future payment to which the applicable individual had a legally binding right to be paid on the date of the in-service payment (determined as of the measurement date based upon all of the applicable factors under the plan as of the measurement date, such as compensation and years of service on that date).

(*2*) *Increases in the present value of future payments after ceasing to be a service provider.* Any increase in the present value of the future payment(s) under a plan in a taxable year that begins after an applicable individual ceases to be a service provider (and that ends before the applicable individual becomes a service provider again, if applicable) that is not due merely to the passage of time or a change in the

reasonable actuarial assumptions used to determine the present value of the future payment(s) is added to the present value of the future payment(s) for the applicable individual as of the measurement date of the most recent preceding taxable year in which the applicable individual was a service provider.

(D) *Transition rule for amounts attributed before the effective date of the final regulations.* Amounts that become otherwise deductible in taxable years beginning before September 23, 2014 may be attributed under the rules set forth in the proposed regulations. If a covered health insurance provider attributes an amount paid to an applicable individual pursuant to the proposed regulations and then chooses to use the present value ratio method to attribute amounts that subsequently become otherwise deductible with respect to that applicable individual, then, for purposes of applying the present value ratio method to attribute any amount that becomes otherwise deductible under the plan in any taxable year after the taxable year in which the last payment was made that was attributed pursuant to the proposed regulations, the present value of the future payment(s) as of the measurement date for each taxable year that ends before the taxable year in which the last payment that was attributed pursuant to the proposed regulations is reduced by the present value of each future payment to which the applicable individual had a legally binding right to be paid that was attributed pursuant to the proposed regulations (determined as of the measurement date based upon all of the applicable factors under the plan as of the measurement date, such as compensation and years of service on that date), with no adjustment for an amount that became otherwise deductible, but was not paid.

(iii) *Formula benefit ratio method*—(A) *In general.* Under this method, remuneration that becomes otherwise deductible under a nonaccount balance plan on a date (referred to for these purposes as the *date of payment*) must be attributed to services performed by the applicable individual in each taxable year of the covered health insurance provider ending with or before the payment year during which the applicable individual was a service provider and for which the formula benefit of the applicable individual under the plan increased (determined in accordance with paragraph (d)(3)(iii)(B), (C) and (D) of this section). The amount attributed to each such taxable year is equal to the amount of remuneration that becomes otherwise deductible under the plan on the date of payment multiplied by a fraction, the numerator of which is the increase in the applicable individual's formula benefit under the plan for the taxable year and the denominator of which is the sum of all such increases for all taxable years during which the applicable individual was a service provider (which will generally be the amount that becomes otherwise deductible under the plan on the date of payment). Thus, remuneration that becomes otherwise deductible under a plan is attributed to a taxable year of the covered health insurance provider in proportion to the increase in the applicable individual's formula benefit under the plan in that taxable year.

(B) *Formula benefit.* For purposes of this paragraph (d)(4)(iii), an applicable individual's formula benefit as of any date is the benefit (or portion thereof) to which the applicable individual has a legally binding right under a nonaccount balance plan as of that date determined based upon all of the applicable factors under the plan (for example, compensation and years of service as of that date), disregarding any substantial risk of forfeiture and assuming that the applicable individual meets any applicable eligibility requirements for the benefit as of that date. For this purpose, the formula benefit is expressed in the form that it has become otherwise deductible. For example, if an applicable individual's benefit under a plan is paid in the form of a single lump sum, then the applicable individual's formula benefit under the plan is expressed in the form of a single lump sum for all purposes under this paragraph (d)(4)(iii). If the amount that becomes otherwise deductible is payable in more than one form of payment (for example, 50 percent of the benefit is paid in the form of a lump sum and 50 percent is paid in the form of a life annuity), then each separate form of payment is treated as a separate formula benefit to which this paragraph (d)(4)(iii) is applied separately.

(C) *Increase in formula benefit.* For purposes of this paragraph (d)(4)(iii), an increase in an applicable individual's formula benefit under a nonaccount balance plan occurs for a taxable year of a covered health insurance provider if the formula benefit as of the measurement date in that taxable year is greater than the formula benefit as of the measurement date in every earlier taxable year. In that case, the amount of the increase for that taxable year is equal to excess of the formula benefit as of the measurement date in that taxable year over the greatest formula benefit as of any measurement date in any earlier taxable year. If the applicable individual's formula benefit as of a measurement date in a taxable year is less than or equal to the applicable individual's formula benefit as of the measurement date in any earlier taxable year, there is no increase in the formula benefit to which the applicable individual has a legally binding right under the plan for that later taxable year.

(D) *Certain adjustments.* For purposes of determining the increase in the formula benefit as of a date of payment under paragraph (d)(4)(iii)(C) of this section, the rules of this paragraph (d)(3)(iii)(D) apply—

(*1*) *Attribution to payment year.* Solely for purposes of attributing a payment under this paragraph (d)(4)(iii) (including an in-service payment), the date of payment is substituted for the measurement date in the payment year to determine whether an increase in the formula benefit occurs in the payment year and the amount of any such increase.

(*2*) *Amounts not paid.* If an amount becomes otherwise deductible under a nonaccount balance plan, but is not paid, the formula benefit for that amount must be determined using the form in which it will be paid, if that form is known, or any form in which it may be paid, if the actual form of payment is unknown.

(*3*) *Increases in the formula benefit after ceasing to be a service provider.* Any increase in the formula benefit with respect to an applicable individual resulting from a legally binding right arising in a taxable year that begins after the applicable individual ceases to be a service provider (and that ends before the applicable individual becomes a service provider again, if applicable) is added to the formula benefit with respect to the applicable individual as of the measurement date of the first preceding taxable year in which the applicable individual was a service provider. However, any increase in the formula benefit resulting from a legally binding right arising in a taxable year that begins before the applicable individual ceases to be a service provider is added to the formula benefit with respect to the applicable individual as of the measurement date of the taxable year in which the legally binding right arises, even if the increase is not reflected until after the applicable individual ceases to be a service provider (such as in the case of a cost of living adjustment).

(5) *Equity-based remuneration*—(i) *Stock options and stock appreciation*

rights—(A) *In general.* Except as provided in paragraph (d)(5)(i)(B) of this section, remuneration resulting from the exercise of a stock option (including compensation income arising at the time of a disqualifying disposition of an incentive stock option described in section 422 or an option under an employee stock purchase plan described in section 423) or a stock appreciation right (SAR) is attributable to services performed by an applicable individual for a covered health insurance provider on a daily *pro rata* basis over the period beginning on the date of grant (within the meaning of § 1.409A–1(b)(5)(vi)(B)) of the stock option or SAR and ending on the date that the stock option or SAR is exercised, excluding any days on which the applicable individual is not a service provider.

(B) *Stock options or SARs subject to a substantial risk of forfeiture.* If a stock option or SAR is subject to a substantial risk of forfeiture, a covered health insurance provider may attribute remuneration resulting from the exercise of the stock option or SAR to services performed by an applicable individual in a taxable year on a daily *pro rata* basis over the period beginning on the date of grant (within the meaning of § 1.409A–1(b)(5)(vi)(B)) of the stock option or SAR and ending on the first date that the stock option or SAR is no longer subject to a substantial risk of forfeiture, but only if the covered health insurance provider uses this attribution method consistently for all stock options or SARs exercised in taxable years of a covered health insurance provider beginning after September 23, 2014, except as provided in paragraph (f)(3) of this section.

(ii) *Restricted stock.* Remuneration resulting from restricted stock, for which an election under section 83(b) has not been made, that becomes substantially vested or transferred is attributed on a daily *pro rata* basis to services performed by an applicable individual for a covered health insurance provider over the period, excluding any days on which the applicable individual is not a service provider, beginning on the date the applicable individual obtains a legally binding right to the restricted stock and ending on the earliest of—

(A) The date the restricted stock becomes substantially vested, or

(B) The date the restricted stock is transferred by the applicable individual.

(iii) *Restricted stock units.* Remuneration resulting from a restricted stock unit (*RSU*) is attributed on a daily pro rata basis to services performed by an applicable individual for a covered health insurance provider over the period beginning on the date the applicable individual obtains a legally binding right to the RSU and ending on the date the remuneration is paid or made available, excluding any days on which the applicable individual is not a service provider.

(iv) *Partnership interests and other equity.* [Reserved]

(6) *Involuntary separation pay.* Involuntary separation pay is attributable to services performed by an applicable individual for a covered health insurance provider in the taxable year in which the involuntary separation from service occurs. Alternatively, the covered health insurance provider may attribute involuntary separation pay to services performed by an applicable individual on a daily *pro rata* basis beginning on the date that the applicable individual obtains a legally binding right to the involuntary separation pay and ending on the date of the involuntary separation from service. Involuntary separation pay to different individuals may be attributed using different methods; however, if involuntary separation payments are made to the same individual over multiple taxable years, all the payments must be attributed using the same method. For purposes of this section, the term *involuntary separation pay* means remuneration to which an applicable individual has a right to payment solely as a result of the individual's involuntary separation from service (within the meaning of § 1.409A–1(n)). To the extent that involuntary separation pay is attributed to services performed in two or more taxable years of a covered health insurance provider as permitted under this paragraph, any amount of involuntary separation pay that is paid or made available must be attributed to services performed in all of those taxable years in the same proportion that the total involuntary separation pay is attributed to taxable years of the covered health insurance provider.

(7) *Reimbursements.* Remuneration that is provided in the form of a reimbursement or benefit provided in-kind (other than cash) is attributable to services performed by an applicable individual in the taxable year of a covered health insurance provider in which the applicable individual makes a payment for which the applicable individual has a right to reimbursement or receives an in-kind benefit, except that remuneration provided in the form of a reimbursement or in-kind benefit during a taxable year of a covered health insurance provider in which an applicable individual is not a service provider is attributable to services performed in the most recent preceding taxable year of the covered health insurance provider in which the applicable individual is a service provider.

(8) *Split-dollar life insurance.* Remuneration resulting from a split-dollar life insurance arrangement (as defined in § 1.61–22(b)) under which an applicable individual has a legally binding right to economic benefits described in § 1.61–22(d)(2)(ii) (policy cash value to which the non-owner has current access within the meaning of § 1.61–22(d)(4)(ii)) or § 1.61–22(d)(2)(iii) (any other economic benefits provided to the non-owner) is attributable to services performed in the taxable year of the covered health insurance provider in which the legally binding right arises. Split-dollar life insurance arrangements under which payments are treated as split-dollar loans under § 1.7872–15 generally will not give rise to DDR within the meaning of paragraph (b)(11) of this section, although they may give rise to AIR. However, in certain situations, this type of arrangement may give rise to DDR for purposes of section 162(m)(6), for example, if amounts due on a split-dollar loan are waived, cancelled, or forgiven.

(9) *Examples.* The following examples illustrate the principles of paragraphs (d)(1) through (8) of this section. For purposes of these examples, each corporation has a taxable year that is the calendar year and is a covered health insurance provider for all relevant taxable years, DDR is otherwise deductible in the taxable year in which it is paid, and amounts payable under nonaccount balance plans are not forfeitable upon the death of the applicable individual. For purposes of these examples, the interest rates used in these examples are assumed to be reasonable.

Example 1 (Account balance plan—account balance ratio method with earnings and a single payment). (i) B is an applicable individual of corporation Y for all relevant taxable years. On January 1, 2016, B begins participating in a nonqualified deferred compensation plan of Y that is an account balance plan. Under the terms of the plan, all amounts are fully vested at all times, and Y will pay B's entire account balance on January 1, 2019. B's account earns five percent interest per year, compounded annually. Y credits $10,000 to B under the plan annually on January 1 for three years beginning on January 1, 2016. Thus, B's account balance is $10,500 ($10,000 + ($10,000 × 5%)) on December 31, 2016; $21,525 ($10,500 + $10,000 + ($20,500 × 5%)) on December 31, 2017; and $33,101 ($21,525 + $10,000 + ($31,525 × 5%)) on December 31, 2018. On January 1, 2019, Y

pays B $33,101, the entire account balance. Y attributes payments under its account balance plans using the account balance ratio method described in paragraph (d)(3)(i) of this section.

(ii) The increase in B's account balance during 2016 is $10,500 ($10,500 − zero); the increase in B's account balance for 2017 is $11,025 ($21,525 − $10,500); and the increase in B's account balance for 2018 is $11,576 ($33,101 − $21,525). The sum of all the increases is $33,101 ($10,500 + $11,025 + $11,576). Accordingly, for Y's 2016 taxable year, the attribution fraction is .3172 ($10,500/$33,101); for Y's 2017 taxable year, the attribution fraction is .3331 ($11,025/$33,101); and for Y's 2018 taxable year, the attribution fraction is .3497 ($11,576/$33,101).

(iii) With respect to the $33,301 payment made on January 1, 2019, $10,500 ($33,101 × .3172) of DDR is attributable to services performed by B in Y's 2016 taxable year; $11,026 ($33,101 × .3331) of DDR is attributable to services performed by B in Y's 2017 taxable year; and $11,575 ($33,101 × .3497) of DDR is attributable to services performed by B in Y's 2018 taxable year.

Example 2 (Account balance plan—principal additions method with earnings and a single payment. (i) The facts are the same as in *Example 1,* except that Y attributes remuneration using the principal additions method described in paragraph (d)(3)(ii) of this section.

(ii) The $10,000 principal addition made on January 1, 2016 and $1,576 of earnings thereon (interest on the 2016 $10,000 principal addition at five percent for three years compounded annually) are attributable to services performed by B in Y's 2016 taxable year; the principal addition of $10,000 on January 1, 2017 and $1,025 of earnings thereon (interest on the 2017 $10,000 principal addition at five percent for two years compounded annually) are attributable to services performed by B in Y's 2017 taxable year; and the principal addition of $10,000 to B's account on January 1, 2018 and $500 of earnings thereon (interest on the 2018 $10,000 principal addition at five percent for one year compounded annually) are attributable to services performed by B in Y's 2018 taxable year. Accordingly, with respect to the $33,301 payment made on January 1, 2019, $11,576 ($10,000 + $1,576) is attributable to services performed by B in Y's 2016 taxable year; $11,025 ($10,000 + $1,025) is attributable to services performed in Y's 2017 taxable year; and $10,500 ($10,000 + $500) is attributable to services performed by B in Y's 2018 taxable year.

Example 3 (Account balance plan—account balance ratio method with earnings and losses). (i) J is an applicable individual of corporation Z for all relevant taxable years. On January 1, 2016, J begins participating in a nonqualified deferred compensation plan of Z that is an account balance plan. Under the terms of the plan, all amounts are fully vested at all times, and Z will pay J's entire account balance on January 1, 2019. Z credits $10,000 to J under the plan on January 1, 2016 and January 1, 2018. Earnings under the terms of the plan are based on a predetermined actual investment (as defined in § 31.3121(v)(2)–1(e)(2)(i)(B)), which results in J's account balance increasing by five percent in the 2016 taxable year, decreasing by five percent in the 2017 taxable year, and increasing again by five percent in the 2018 taxable year. Therefore, on December 31, 2016, J's account balance is $10,500 ($10,000 + ($10,000 × 5%)); on December 31, 2017, J's account balance is $9,975 ($10,500 − ($10,500 × 5%)); and on December 31, 2018, J's account balance is $20,974 ($9,975 + $10,000 + ($19,975 × 5%)). On January 1, 2019, Z pays J the entire account balance of $20,974.

(ii) The increase in J's account balance for 2016 is $10,500 ($10,500 − zero); the increase in J's account balance for 2017 is zero (because J's account balance decreased by $525 ($9,975 − $10,500)); the increase in J's account balance for 2018 is $10,474 ($20,974 − $10,500, which is the highest account balance in any prior taxable year). The sum of all the increases is $20,974 ($10,500 + $10,474). Thus, for Z's 2016 taxable year the attribution fraction is .5006 ($10,500/$20,974); for Z's 2017 taxable year the attribution fraction is zero because there was a decrease in the account balance for the year; and for Z's 2018 taxable year the attribution fraction is .4994 ($10,474/$20,974).

(iii) Accordingly, with respect to the $20,974 payment made on January 1, 2019, $10,499 ($20,974 × .5006) of DDR is attributable to services performed by J in Z's 2016 taxable year, and $10,474 ($20,973.75 × .4994) of DDR is attributable to services performed by J in Z's 2018 taxable year. No amount is attributable to services performed by J in Z's 2017 taxable year because there was no increase in the account balance for that taxable year.

Example 4 (Account balance plan—principal additions method with earnings and losses). (i) The facts are the same as in *Example 3,* except that Z attributes remuneration using the principal additions method described in paragraph (d)(3)(ii) of this section.

(ii) The $10,000 principal addition made on January 1, 2016 and the $474 of net earnings thereon ($500 of earnings for 2016, $525 of losses for 2017, and $499 of earnings for 2018) are attributable to services performed by J in Z's 2016 taxable year; and the $10,000 principal addition made on January 1, 2018 and the $500 of earnings thereon are attributable to services performed by J in Z's 2018 taxable year. Accordingly, with respect to the $20,974 payment made on January 1, 2019, $10,474 ($10,000 + $474) of DDR is attributable to services performed by J in Z's 2016 taxable year, and $10,500 ($10,000 + $500) of DDR is attributable to services performed by J in Z's 2018 taxable year.

Example 5 (Account balance plan—account balance ratio method with losses and an in-service payment). (i) N is an applicable individual of corporation M for all relevant taxable years. On January 1, 2016, N begins participating in a nonqualified deferred compensation plan sponsored by M that is an account balance plan. Under the plan, all amounts are fully vested at all times. The balances in N's account are $110,000 on December 31, 2016; $90,000 on December 31, 2017; $250,000 on December 31, 2018; and $240,000 on December 31, 2019. N ceases providing services to N on December 31, 2019. In accordance with the plan terms, M pays to N $10,000 on September 30, 2017, $150,000 on January 1, 2021, and $100,000 on January 1, 2022. M attributes payments under its account balance plans using the account balance ratio method described in paragraph (d)(3)(i) of this section.

(ii) For purposes of attributing the $10,000 payment made on September 30, 2017 to taxable years, the increase in N's account balance for 2016 is $110,000 ($110,000 − zero). N's account balance for 2017 is treated as $100,000 ($90,000 + $10,000 payment on September 30, 2017), but, because the account balance of $100,000 is less than the account balance in an earlier year, the increase in N's account balance for 2017 is zero. The sum of all the increases in N's account balance is $110,000 ($110,000 + $0). Thus, the attribution fraction for 2016 is 1 ($110,000/$110,000), and the attribution fraction for 2017 is zero ($0/$110,000). Accordingly, with respect to the $10,000 payment made on September 30, 2017, the entire $10,000 is attributable to services performed by N in M's 2016 taxable year, and no amount is attributable to services performed by N in M's 2017 taxable year.

(iii) After attributing the September 30, 2017 payment of $10,000 to 2016, N's account balance for 2016 is treated as being $100,000 ($110,000 − $10,000), and the increase for 2016 is likewise treated as $100,000; N's account balance for 2017 decreased; the increase in N's account balance for 2018 is $150,000 ($250,000 − $100,000); and N's account balance for 2018 decreased. The sum of all the increases is $250,000 ($100,000 + $150,000). Thus, the attribution fraction for 2016 is .40 ($100,000/$250,000); the attribution fraction for 2017 is zero ($0/$250,000); the attribution fraction for 2018 is .60 ($150,000/$250,000); and the attribution fraction for 2019 is zero ($0/$250,000).

(iv) Accordingly, with respect to the $150,000 payment made on January 1, 2021, $60,000 ($150,000 × .40) is attributable to services performed by N in M's 2016 taxable year, and $90,000 ($150,000 × .60) is attributable to services performed by N in M's 2018 taxable year. With respect to the $100,000 payment made on January 1, 2022, $40,000 ($100,000 × .40) is attributable to services performed by N in M's 2016 taxable year, and $60,000 ($100,000 × .60) is attributable to services performed by N in M's 2018 taxable year. No amount is attributable to services performed by N in M's 2017 and 2019 taxable years.

Example 6 (Account balance plan—principal additions method with multiple payments). (i) O is an applicable individual of corporation L for all relevant taxable years. On January 1, 2016, O begins participating in a nonqualified deferred compensation plan sponsored by L that is an account balance plan. Under the plan, all amounts are fully vested at all times. L credits principal additions to O's account each year, and

credits earnings based on a predetermined actual investment within the meaning of § 31.3121(v)(2)–1(d)(2)(i)(B). L makes principal additions of $90,000 on June 30, 2016; $140,000 on June 30, 2017; and $180,000 on June 30, 2018. The predetermined actual investment earns five percent for 2016, seven percent for 2017; eight percent for 2018; and nine percent for 2019. Thus, as of December 31, 2018, the earnings with respect to the $90,000 principal addition made on June 30, 2016 are $16,605, for a total of $106,605; and the earnings with respect to the $140,000 principal addition made on June 30, 2017 are $16,492, for a total of $156,492. As of January 1, 2020, the earnings with respect to the $180,000 principal addition made on June 30, 2018 are $24,048, for a total of $204,048. Under the terms of the plan, the principal addition (and earnings thereon) made on June 30, 2016 and June 30, 2017 are payable on December 31, 2018, and the principal addition (and earnings thereon) made on June 30, 2018 is payable on January 1, 2020. On December 31, 2018, L pays O $263,097 in accordance with the plan terms. On January 1, 2020, L pays O the remaining account balance of $204,048 in accordance with the plan terms.

(ii) The $263,097 payment made on December 31, 2018 is attributed to services performed by O in the 2016 and 2017 taxable years. Of the $263,097 payment, $106,605 is attributable to services performed by O in L's 2016 taxable year because this amount represents the $90,000 principal addition made on June 30, 2016 and earnings thereon. The remaining $156,492 is attributable to services performed by O in L's 2017 taxable year because this amount represents the $140,000 principal addition made on June 30, 2017 and earnings thereon. The $204,048 payment made on January 1, 2020 is attributable to services performed by O in L's 2018 taxable year because this amount represents the $180,000 principal addition made on June 30, 2018 and earnings thereon.

Example 7 (Account balance plan—account balance ratio method with an employer contribution after the applicable individual ceases to be a service provider). (i) A is an applicable individual of corporation Z for all relevant taxable years. On January 1, 2016, A begins participating in a nonqualified deferred compensation plan of Z that is an account balance plan. Under the terms of the plan, all amounts are fully vested at all times. The balances in A's account (including employer contributions and earnings) are $20,000 on December 31, 2016, and $60,000 on December 31, 2017. On December 31, 2017, A ceases providing services to Z. On January 1, 2019, Z makes a discretionary contribution of $30,000 to A's account balance plan. On December 31, 2019, in accordance with the plan terms, Z pays $120,000 to A, which is N's entire account balance. Z attributes payments under its account balance plans using the account balance ratio method described in paragraph (d)(3)(i) of this section.

(ii) The increase in A's account balance for 2016 is $20,000; the increase in A's account balance for 2017 is $40,000. The discretionary contribution made on January 1, 2019 of $30,000 is added to the account balance for 2017. Thus, the discretionary contribution of $30,000 on January 1, 2019, is treated as increasing A's account balance for 2017 by $30,000. The increase in A's account balance for 2016 is $20,000, and the increase in A's account balance for 2017 is $70,000 ($40,000 + $30,000). The sum of all the increases is $90,000 ($20,000+$70,000).

(iii) Thus, the attribution fraction for 2016 is .2222 ($20,000/$90,000); and the attribution fraction for 2017 is .7778 ($70,000/$90,000). Accordingly, with respect to the $120,000 payment made on January 1, 2019, $26,664 ($120,000 × .2222) is attributable to services performed by A in Z's 2016 taxable year, and $93,336 ($120,000 × .7778) is attributable to services performed by A in Z's 2017 taxable year.

Example 8 (Account balance plan—principal additions method with a principal addition after the applicable individual ceases to be a service provider). (i) C is an applicable individual of corporation X for all relevant taxable years. On January 1, 2016, C begins participating in a nonqualified deferred compensation plan of X that is an account balance plan. Earnings under the terms of the plan are based on a predetermined actual investment (as defined in § 31.3121(v)(2)–1(e)(2)(i)(B)). Under the terms of the plan, all amounts are fully vested at all times. X credits a $10,000 principal addition to C under the plan on April 1, 2016, and a $20,000 principal addition to C on April 1, 2017. C ceases providing services to X on December 31, 2017. On January 1, 2019, X credits $30,000 to C's account in recognition of C's past services. The $10,000 principal addition made on April 1, 2016 increases to $15,000 as of December 31, 2019, as a result of earnings. The $20,000 principal addition made on April 1, 2017, increases to $28,000 as of December 31, 2019 as a result of earnings. The January 1, 2019, contribution of $30,000 increases to $33,000 as of December 31, 2019, as a result of earnings. On December 31, 2019, in accordance with the plan terms, X pays C's entire account balance of $76,000. X attributes payments under its account balance plans using the principal additions method described in paragraph (d)(3)(ii) of this section.

(ii) When the $76,000 payment is made to C on December 31, 2019, the remuneration becomes attributable to service performed by C in prior taxable years. The $10,000 principal addition in 2016 plus earnings thereon of $5,000 are attributable to services performed by C in X's 2016 taxable year, and the $20,000 principal addition in 2017 (plus earnings thereon of $8,000) are attributable to services performed by C in X's 2017 taxable year. The principal addition of $30,000 plus earnings thereon of $3,000 ($33,000) are also attributable to services performed by C in X's 2017 taxable year. Thus, $16,500 of the $33,000 is attributed to services performed by C in X's 2017 taxable year.

(iii) Accordingly, with respect to the $76,000 payment by X to C on December 31, 2019, $15,000 ($10,000 + $5,000) is attributed to services performed by C in X's 2016 taxable year, and $61,000 ($20,000 + $8,000 + $33,000) is attributed to services performed by C in X's 2017 taxable year.

Example 9 (Nonaccount balance plan—present value ratio method with a single payment). (i) C is an applicable individual of corporation X for all relevant taxable years. On January 1, 2015, X grants C a vested right to a $100,000 payment on January 1, 2020. C ceases providing services on December 31, 2019. The payment of $100,000 is made on January 1, 2020. X determines the present value of the payment using an interest rate of five percent for all years.

(ii) The present value of $100,000 payable on January 1, 2020, determined using a five percent interest rate, is $82,270 as of December 31, 2015; $86,384 as of December 31, 2016; $90,703 as of December 31, 2017; $95,238 as of December 31, 2018, and $100,000 as of December 31, 2019. Accordingly, $82,270 is the amount of the increase in the present value of the future payment of $100,000 for X's 2015 taxable year ($82,270 − $0); $4,114 ($86,384 − $82,270) is the increase in the present value of the future payment for X's 2016 taxable year; $4,319 ($90,703 − $86,384) is the increase in the present value of the future payment for X's 2017 taxable year; $4,535 ($95,238 − $90,703) is the increase in the present value of the future payment for X's 2018 taxable year; and $4,762 ($100,000 − $95,238) is the increase in the present value of the future payment for X's 2019 taxable year. The sum of all the increases is $100,000 ($82,270 + $4,114 + $4,319 + $4,535 + $4,762). Thus, the attribution fraction for 2015 is .8227 ($82,270/$100,000); the attribution fraction for 2016 is .0411 ($4,114/$100,000); the attribution fraction for 2017 is .0432 ($4,319/$100,000); the attribution fraction for 2018 is .0454 ($4,535/$100,000); and the attribution fraction for 2019 is .0476 ($4,762/$100,000).

(iii) The $100,000 payment made on January 1, 2020 is multiplied by the attribution fraction for each taxable year, and the result is the amount that is attributable to service performed by C for that taxable year. Accordingly, $82,270 ($100,000 × .8227) is attributable to services performed by C in X's 2015 taxable year; $4,114 ($100,000 × .0411) is attributable to services performed by C in X's 2016 taxable year; $4,319 ($100,000 × .0432) is attributable to services performed by C in X's 2017 taxable year; $4,535 ($100,000 × .0454) is attributable to services performed by C in X's 2018 taxable year; and $4,762 ($100,000 × .0476) is attributable to services performed by C in X's 2019 taxable year.

Example 10. (Nonaccount balance plan—present value ratio method with an in-service payment). (i) The facts are the same as *Example 9,* except that X grants C a vested right to a $40,000 payment on June 30, 2018 and a vested right to a $60,000 payment on January 1, 2020.

(ii) The present value of the future payments ($40,000 payable on June 30, 2018 and $60,000 payable on January 1, 2020), determined using a five percent interest rate, is $84,758 as of December 31, 2015; $88,996 as of December 31, 2016; $93,446 as of December 31, 2017; and $57,143 as of December 31, 2018. However, for purposes of determining the increase in the present value of the future payments during 2018 (the year

of the in-service payment), $57,143 must be increased by $40,000, the amount of the in-service payment, resulting in a present value of future payments as of December 31, 2018, of $97,143 solely for purposes of attributing the $40,000 in-service payment. Accordingly, $84,758 is the amount of the increase in the present value of the future payments for X's 2015 taxable year, $4,238 ($88,896 − $84,758) is the increase in the present value of the future payments for X's 2016 taxable year, $4,450 ($93,446 − $88,996) is the increase in the present value of the future payments for X's 2017 taxable year, and $3,697 ($97,143 − $93,446) is the increase in the present value of the future payments for X's 2018 taxable year. The sum of all the increases is $97,143 ($84,758 + $4,238 + $4,450 + $3,697). Thus, the attribution fraction for 2015 is .8725 ($84,758/$97,143); the attribution fraction for 2016 is .0436 ($4,238/$97,143); the attribution fraction for 2017 is .0458 ($4,450/$97,143); and the attribution fraction for 2018 is .0381 ($3,697/$97,143).

(iii) Accordingly, with respect to the $40,000 payment made on June 30, 2018, $34,900 ($40,000 × .8725) is attributable to services performed by C in X's 2015 taxable year; $1,744 ($40,000 × .0436) is attributable to services performed by C in X's 2016 taxable year; $1,832 ($40,000 × .0458) is attributable to services performed by C in X's 2017 taxable year; and $1,524 ($40,000 × .0381) is attributable to services performed by C in X's 2018 taxable year.

(iv) For purposes of attributing the $60,000 payment made on January 1, 2020, the present value of the future payments for each taxable year that ends prior to the taxable year in which the $40,000 in-service payment is paid is reduced by the present value of the future payment to which the applicable individual had a legally binding right to be paid on the date the $40,000 in-service is paid (based on the applicable factors and plan provisions as of the measurement date in each such taxable year). The present value of that future payment is $35,396 as of December 31, 2015; $37,166 as of December 31, 2016; and $39,024 as of December 31, 2017. Therefore, for purposes of attributing the $60,000 payment on January 1, 2020, the present value of future payments as of December 31, 2015, is $49,362 ($84,758 − $35,396); the present value of future payments as of December 31, 2016, is $51,830 ($88,996 − $37,166); the present value of future payments as of December 31, 2017, is $54,422 ($93,446 − $39,024). The present value of future payments as of December 31, 2018, is $57,143. Accordingly, $49,362 is the increase in the present value of the future payment of $60,000 for X's 2015 taxable year; $2,468 ($51,830 − $49,362) is the increase in the present value of the future payment for X's 2016 taxable year; $2,592 ($54,422 − $51,830) is the increase in the future value of the payment for X's 2017 taxable year; $2,721 ($57,143 − $54,422) is the increase in the future value of the payments for X's 2018 taxable year; and $2,857 ($60,000 − $57,143) is the increase in the future value of the payment for X's 2019 taxable year. The sum of all the increases is $60,000 ($49,362 + $2,468 + $2,592 + $2,721 + $2,857). Thus, the attribution fraction for 2015 is .8227 ($49,362/$60,000); the attribution fraction for 2016 is .0411 ($2,468/$60,000); the attribution fraction for 2017 is .0432 ($2,592/$60,000); the attribution fraction for 2018 is .0454 ($2,721/$60,000); and the attribution fraction for 2019 is .0476 ($2,857/$60,000).

(v) Accordingly, with respect to the $60,000 payment made on January 1, 2020, $49,362 ($60,000 × .8227) is attributable to services performed by C in X's 2015 taxable year; $2,468 ($60,000 x .0411) is attributable to services performed by C in X's 2016 taxable year; $2,592($60,000 × .0432) is attributable to services performed by C in X's 2017 taxable year; $2,721 ($60,000 × .0454) is attributable to services performed by C in X's 2018 taxable year; and $2,857 ($60,000 × .0476) is attributable to services performed by C in X's 2019 taxable year.

Example 11 (Nonaccount balance plan—formula benefit ratio method with losses and multiple payments). (i) D is an applicable individual of W for all relevant taxable years. D becomes a participant in a nonaccount balance plan sponsored by R on January 1, 2018. The plan provides W with the vested right to receive a five annual installments each equal to $20,000 times the full years of service that D completes. The first payment is to be made on the later of December 31, 2027, or on the December 31 of the first year in which D is no longer a service provider. D has a break in service in 2020 and does not accrue an additional benefit during 2020. D ceases to be a service provider on December 31, 2022, after having completed four years of service, entitling D to five annual payments equal to $80,000 per year commencing on December 31, 2027. W determines the present value of amounts to be paid under the plan using an interest rate of five percent for 2018 and 2019, and seven percent for 2021, 2022, and 2023. W uses the formula benefit ratio method described in paragraph (d)(4)(ii) of this section.

(ii) Under the plan formula, in 2018, E accrued the right to a $20,000 annual payment for five years, and E accrued an additional $20,000 in annual payments in 2019, 2021, and 2022, resulting in the right to receive an annual payment of $80,000 commencing on December 31, 2027. Thus, the attribution fraction is .25 for 2018 ($20,000/$80,000), .25 for 2019 ($20,000/$80,000), .25 for 2021 ($20,000/$80,000), and .25 for 2022 ($20,000/$80,000). The attribution fraction for 2020 is zero because no additional formula benefit accrued during that year.

(iii) The attribution fraction for each disqualified taxable year is multiplied by each payment and the result is attributed to that taxable year. Accordingly, with respect to each $80,000 payment, $20,000 ($80,000 × .25) is attributable to services performed by D in W's 2018 taxable year; $20,000 ($80,000 × .25) is attributable to services performed by D in W's 2019 taxable year; $20,000 ($80,000 × .25) is attributable to services performed by D in W's 2021 taxable year; and $20,000 ($80,000 × .25) is attributable to services performed by D in W's 2022 taxable year. No amount is attributable to services performed by D in W's 2020 taxable year.

Example 12 (Stock option). (i) E is an applicable individual of corporation V for all relevant taxable years. On January 1, 2016, V grants E an option to purchase 100 shares of V common stock at an exercise price of $50 per share (the fair market value of V common stock on the date of grant). The stock option is not subject to a substantial risk of forfeiture. On December 31, 2017, E ceases to be a service provider of V or any member of V's aggregated group. On January 1, 2019, E resumes providing services for V and again becomes both a service provider and an applicable individual of V. On December 31, 2020, when the fair market value of V common stock is $196 per share, E exercises the stock option. The remuneration resulting from the stock option exercise is $14,600 (($196 — $50) × 100).

(ii) The $14,600 is attributed *pro rata* over the 1,460 days from January 1, 2016 to December 31, 2017 and from January 1, 2019 to December 31, 2020 (365 days per year for the 2016, 2017, 2019, and 2020 taxable years), so that $10 ($14,600 divided by 1,460) is attributed to each calendar day in this period, and $3,650 (365 days × $10) of remuneration is attributed to services performed by E in each of V's 2016, 2017, 2019, and 2020 taxable years.

Example 13 (Stock option subject to a substantial risk of forfeiture). (i) The facts are the same as *Example 14,* except that the stock option is subject to a substantial risk of forfeiture that lapses on December 31, 2017, and is not transferable until that date, and V chooses to attribute remuneration resulting from the exercise of stock options that are subject to a substantial risk of forfeiture over the period beginning on the date of grant and ending on the date the substantial risk of forfeiture lapses, as permitted under paragraph (d)(5)(i)(B) of this section.

(ii) The $14,600 is attributed *pro rata* over the 730 days from January 1, 2016 to December 31, 2017 (365 days per year for the 2016 and 2017 taxable years), so that $20 ($14,600 divided by 730) is attributed to each calendar day in this period, and $7,300 (365 days × $20) is attributed to services performed by E in each of V's 2016 and 2017 taxable years.

Example 14 (Restricted stock). (i) F is an applicable individual of corporation U for all relevant taxable years. On January 1, 2017, U grants to F 1000 shares of restricted U common stock. Under the terms of the grant, the shares will be forfeited if F voluntarily terminates employment before December 31, 2019 (so that the shares are subject to a substantial risk of forfeiture through that date) and are nontransferable until the substantial risk of forfeiture lapses. F does not make an election under section 83(b) and continues in employment with U through December 31, 2019, at which time F's rights in the stock become substantially vested within the meaning of § 1.83–3(b) and the fair market value of a share of the stock is $109.50. The remuneration resulting from the vesting of the restricted stock is $109,500 ($109.50 × 1000).

(ii) The $109,500 of remuneration is attributed to services performed by F over the 1,095 days between January 1, 2017 and December 31, 2019 (365 days per year for the

2017, 2018, and 2019 taxable years), so that $100 ($109,500 divided by 1,095) is attributed to each calendar day in this period, and remuneration of $36,500 (365 days × $100) is attributed to services performed by F in each of U's 2017, 2018, and 2019 taxable years.

Example 15 (RSUs). (i) G is an applicable individual of corporation T for all relevant taxable years. On January 1, 2018, T grants to G 1000 RSUs. Under the terms of the grant, T will pay G an amount on December 31, 2020 equal to the fair market value of 1000 shares of T common stock on that date, but only if G continues to provide substantial services to T (so that the RSU is subject to a substantial risk of forfeiture) through December 31, 2020. G remains employed by T through December 31, 2020, at which time the fair market value of a share of the stock is $219, and T pays G $219,000 ($219 × 1000).

(ii) The $219,000 in remuneration is attributed to services performed by G over the 1,095 days beginning on January 1, 2018 and ending on December 31, 2020 (365 days per year for the 2018, 2019, and 2020 taxable years), so that $200 ($219,000/1,095) is attributed to each calendar day in this period, and $73,000 (365 days × $200) is attributed to service performed by G in each of T's 2018, 2019, and 2020 taxable years.

Example 16 (Involuntary separation pay). (i) H is an applicable individual of corporation S. On January 1, 2015, H and S enter into an employment contract providing that S will make two payments of $150,000 each to H if H has an involuntary separation from service. Under the terms of the contract, the first payment is due on January 1 following the involuntary separation from service, and the second payment is due on January 1 of the following year. On December 31, 2016, H has an involuntary separation from service. S pays H $150,000 on January 1, 2017 and $150,000 on January 1, 2018.

(ii) Pursuant to paragraph (d)(6) of this section, involuntary separation pay may be attributed to services performed by H in the taxable year of S in which the involuntary separation from service occurs. Alternatively, involuntary separation pay may be attributed to services performed by H on a daily *pro rata* basis beginning on the date H obtains a legally binding right to the involuntary separation pay and ending on the date of the involuntary separation from service. The entire $300,000 amount, including both $150,000 payments, must be attributed using the same method. Therefore, the entire $300,000 amount (comprised of two $150,000 payments) may be attributed to services performed by H in S's 2016 taxable year, which is the taxable year in which the involuntary separation from service occurs. Alternatively, each $150,000 payment may be attributed on a daily *pro rata* basis to the period beginning on January 1, 2015 and ending December 31, 2016, so that $410.96 (($150,000 × 2)/(365 × 2)) is attributed to each day of S's 2015 and 2016 taxable years. Accordingly, $150,000 is attributed to services performed by H in each of S's 2015 and 2016 taxable years.

Example 17 (Reimbursement after termination of services). (i) I is an applicable individual of corporation R. On January 1, 2018, I enters into an agreement with R under which R will reimburse I's country club dues for two years following I's separation from service. On December 31, 2020, I ceases to be a service provider of R. I pays $50,000 in country club dues on January 1, 2021 and $50,000 on January 2, 2022. Pursuant to the agreement, R reimburses I $50,000 for the country club dues in 2021 and $50,000 in 2022.

(ii) $100,000 is attributed to services performed in R's 2020 taxable year, the taxable year in which I ceases to be a service provider.

(10) *Certain remuneration subject to a substantial risk of forfeiture.* If remuneration is attributable in accordance with paragraphs (d)(2) (legally binding right), (d)(3) (account balance plan), or (d)(4) (nonaccount balance plan) of this section to services performed in a period that includes two or more taxable years of a covered health insurance provider during which the remuneration is subject to a substantial risk of forfeiture, that remuneration must be attributed using a two-step process. First, the remuneration must be attributed to the taxable years of the covered health insurance provider in accordance with paragraph (d)(2), (3), or (4) of this section, as applicable. Second, the remuneration attributed to the period during which the remuneration is subject to a substantial risk of forfeiture (the vesting period) must be reattributed on a daily *pro rata* basis over that period beginning on the date that the applicable individual obtains a legally binding right to the remuneration and ending on the date that the substantial risk of forfeiture lapses. If a vesting period begins on a day other than the first day of a covered health insurance provider's taxable year or ends on a day other than the last day of the covered health insurance provider's taxable year, the remuneration attributable to that taxable year under the first step of the attribution process is divided between the portion of the taxable year that includes the vesting period and the portion of the taxable year that does not include the vesting period. The amount attributed to the portion of the taxable year that includes the vesting period is equal to the total amount of remuneration that would be attributable to the taxable year under the first step of the attribution process, multiplied by a fraction, the numerator of which is the number of days during the taxable year that the amount is subject to a substantial risk of forfeiture and the denominator of which is the number of days in such taxable year. The remaining amount is attributed to the portion of the taxable year that does not include the vesting period and, therefore, is not reattributed under the second step of the attribution process.

(11) *Example.* The following example illustrates the principles of paragraph (d)(10) of this section. For purposes of this example, the corporation has a taxable year that is the calendar year and is a covered health insurance provider for all relevant taxable years, DDR is otherwise deductible in the taxable year in which it is paid, and amounts payable under nonaccount balance plans are not forfeitable upon the death of the applicable individual.

Example (Account balance plan subject to a substantial risk of forfeiture using the principal additions method). (i) J is an applicable individual of corporation Q for all relevant taxable years. On January 1, 2016, J begins participating in a nonqualified deferred compensation plan that is an account balance plan. Under the terms of the plan, Q will pay J's account balance on January 1, 2021, but only if J continues to provide substantial services to Q through December 31, 2018 (so that the amount credited to J's account is subject to a substantial risk of forfeiture through that date). Q credits $10,000 to J's account annually for five years on January 1 of each year beginning on January 1, 2016. The account earns interest at a fixed rate of five percent per year, compounded annually, which solely for the purposes of this example, is assumed to be a reasonable rate of interest. Q attributes increases in account balances under the plan using the principal additions method described in paragraph (d)(3)(ii) of this section.

(ii) Earnings on a principal addition are attributed to the same disqualified taxable year of Q to which the principal addition is attributed; therefore, the amount initially attributable to Q's 2016 taxable year is $12,763 (the $10,000 principal addition in 2016 at five percent interest for five years); the amount initially attributable to Q's 2017 taxable year is $12,155 (the $10,000 principal addition in 2017 at five percent interest for four years); the amount initially attributable to Q's 2018 taxable year is $11,576 (the $10,000 principal addition in 2018 at five percent interest for three years); the amount attributable to Q's 2019 taxable year is $11,025 (the $10,000 principal addition in 2019 at five percent interest for two years); and the amount attributable to Q's 2020 taxable year is $10,500 (the $10,000 principal addition in 2020 at five percent interest for one year).

(iii) Remuneration that is attributable to two or more taxable years of Q during which it is subject to a substantial risk of forfeiture must be reattributed on a daily *pro rata* basis to the period beginning on the date that J obtains a legally binding right to the remuneration and ending on the date that the substantial risk of forfeiture lapses. Therefore, $36,494 ($12,763 + $12,155 + $11,576) is reattributed on a daily *pro rata* basis over the period beginning on January 1, 2016, and ending on December 31, 2018. Thus, $12,165 is attributed to services

performed by J in each of Q's 2016, 2017, and 2018 taxable years.

(e) *Application of the deduction limitation*–(1) *Application to aggregate amounts.* The $500,000 deduction limitation is applied to the aggregate amount of AIR and DDR attributable to services performed by an applicable individual in a disqualified taxable year. The aggregate amount of AIR and DDR attributable to services performed by an applicable individual in a disqualified taxable year that exceeds the $500,000 deduction limit is not allowed as a deduction in any taxable year. Therefore, for example, if an applicable individual has more than $500,000 of AIR attributable to services performed for a covered health insurance provider in a disqualified taxable year, the amount of that AIR that exceeds $500,000 is not deductible in any taxable year, and no DDR attributable to services performed by the applicable individual in that disqualified taxable year is deductible in any taxable year. However, if an applicable individual has AIR for a disqualified taxable year that is $500,000 or less and DDR attributable to services performed in the same disqualified taxable year that, when combined with the AIR for the year, exceeds $500,000, all of the AIR is deductible in that disqualified taxable year, but the amount of DDR attributable to that taxable year that is deductible in future taxable years is limited to an amount equal to $500,000 less the amount of the AIR for that taxable year.

(2) *Order of application and calculation of deduction limitation*–(i) *In general.* The deduction limitation with respect to any applicable individual for any disqualified taxable year is applied to AIR and DDR attributable to services performed by that applicable individual in that disqualified taxable year at the time that the remuneration becomes otherwise deductible, and each time the deduction limitation is applied to an amount that is otherwise deductible, the deduction limit is reduced (but not below zero) by the amount against which it is applied. Accordingly, the deduction limitation is applied first to an applicable individual's AIR attributable to services performed in a disqualified taxable year and is reduced (but not below zero) by the amount of the AIR to which the deduction limit is applied. If the applicable individual also has an amount of DDR attributable to services performed in that disqualified taxable year that becomes otherwise deductible in a subsequent taxable year, the deduction limit, as reduced, is applied to that amount of DDR in the first taxable in which the DDR becomes otherwise deductible. The deduction limit is then further reduced (but not below zero) by the amount of the DDR to which the deduction limit is applied. If the applicable individual has an additional amount of DDR attributable to services performed in the original disqualified taxable year that becomes otherwise deductible in a subsequent taxable year, the deduction limit, as further reduced, is applied to that amount of DDR in the taxable year in which it is otherwise deductible. This process continues for future taxable years in which DDR attributable to services performed by the applicable individual in the original disqualified taxable year is otherwise deductible. No deduction is allowed in any taxable year for any AIR or DDR attributable to services performed by an applicable individual in a disqualified taxable year for the excess of those amounts over the deduction limit (as reduced, if applicable) for that disqualified taxable year at the time the deduction limitation is applied to the remuneration.

(ii) *Application to payments*—(A) *In general.* Any payment of remuneration may include amounts that are attributable to services performed by an applicable individual in one or more taxable years of a covered health insurance provider pursuant to paragraphs (d)(2) through (11) of this section. In that case, a separate deduction limitation applies to each portion of the payment that is attributed to services performed in a different disqualified taxable year. Any portion of a payment that is attributed to a taxable year that is a disqualified taxable year is deductible only to the extent that it does not exceed the deduction limit that applies with respect to the applicable individual for that disqualified taxable year, as reduced by the amount, if any, of AIR and DDR attributable to services performed in that disqualified taxable year that was deductible in an earlier taxable year.

(3) *Examples.* The following examples illustrate the rules of paragraphs (e)(1) and (2) of this section. For purposes of these examples, each corporation has a taxable year that is the calendar year and is a covered health insurance provider for all relevant taxable years; DDR is otherwise deductible in the taxable year in which it is paid; and amounts payable under nonaccount balance plans are not forfeitable upon the death of the applicable individual.

Example 1 (Lump-sum payment of DDR attributable to a single taxable year). (i) L is an applicable individual of corporation O. During O's 2015 taxable year, O pays L $550,000 in salary, which is AIR, and grants L a right to $50,000 of DDR payable upon L's separation from service from O. L has a separation from service in 2020, at which time O pays L the $50,000 of DDR attributable to services performed by L in O's 2015 taxable year.

(ii) The $500,000 deduction limitation for 2015 is applied first to L's $550,000 of AIR for 2015. Because the $550,000 of AIR in 2015 is greater than the deduction limit, O may deduct only $500,000 of the AIR for 2015, and $50,000 of the $550,000 of AIR is not deductible for any taxable year. The deduction limit for remuneration attributable to services provided by L in O's 2015 taxable year is then reduced to zero. Because the $50,000 in DDR attributable to services performed by L in 2015 exceeds the reduced deduction limit of zero, that $50,000 is not deductible for any taxable year.

Example 2 (Installment payments of DDR attributable to a single taxable year). (i) M is an applicable individual of corporation N. During N's 2016 taxable year, N pays M $300,000 in salary, which is AIR, and grants M a right to $220,000 of DDR payable on a fixed schedule beginning upon M's separation from service. The $220,000 is attributable to services provided by M in N's 2016 taxable year. M ceases providing services on December 31, 2016. In 2020, N pays M $120,000 of DDR that is attributable to services performed in N's 2016 taxable year. In 2021, N pays M the remaining $100,000 of DDR attributable to services performed by M in N's 2016 taxable year.

(ii) The $500,000 deduction limitation for 2016 is applied first to M's $300,000 of AIR for 2016. Because the deduction limit is greater than the AIR, N may deduct the entire $300,000 of AIR paid in 2016. The $500,000 deduction limit is then reduced to $200,000 because the limitation is reduced by the amount of AIR ($500,000 − $300,000). The reduced deduction limit is then applied to M's $120,000 of DDR attributable to services performed by M in N's 2016 taxable year that is paid in 2020. Because the reduced deduction limit of $200,000 is greater than the $120,000 of DDR, N may deduct the entire $120,000 of DDR paid in 2020. The $200,000 deduction limit is reduced to $80,000 by the $120,000 in DDR because the limit is reduced by the amount of DDR to which the deduction limit applied ($200,000 − $120,000). The reduced deduction limit of $80,000 is then applied to the remaining $100,000 payment of DDR attributable to services performed by M in N's 2016 taxable year. Because the $100,000 payment by N for 2021 exceeds the reduced deduction limit of $80,000, N may deduct only $80,000 of the payment for the 2021 taxable year, and $20,000 of the $100,000 payment is not deductible by N for any taxable year.

Example 3 (Lump-sum payment attributable to multiple years from an account balance plan using the account balance ratio method). (i) N is an applicable individual of corporation M for all relevant taxable years. On January 1, 2015, N begins participating in a nonqualified deferred compensation plan sponsored by M that is an account balance plan. Under the plan, all amounts are fully vested at all times. The balances in N's account (including earnings)

are $50,000 on December 31, 2015, $100,000 on December 31, 2016, and $200,000 on December 31, 2017. N's AIR from M is $425,000 for 2015, $450,000 for 2016, and $500,000 for 2017. On January 1, 2018, in accordance with the plan terms, M pays $200,000 to N, which is a payment of N's entire account balance under the plan. M uses the account balance ratio method to attribute amounts to services performed in taxable years.

(ii) To determine the extent to which M is entitled to a deduction for any portion of the $200,000 payment under the plan, the payment must first be attributed to services performed by N in M's taxable years in accordance with the attribution rules set forth in paragraph (d) of this section. The increase in N's account balance during 2015 is $50,000 ($50,000 − zero); the increase in N's account balance for 2016 is $50,000 ($100,000 − $50,000); and the increase in N's account balance for 2017 is $100,000 ($200,000 − $100,000). The sum of all the increases is $200,000 ($50,000 + $50,000 + $100,000). Accordingly, for N's 2015 taxable year, the attribution fraction is .25 ($50,000/$200,000); for N's 2016, taxable year, the attribution fraction is .25 ($50,000/$200,000); and for N's 2017 taxable year, the attribution fraction is .50 ($100,000/$200,000).

(iii) With respect to the $200,000 payment made on January 1, 2018, $50,000 ($200,000 × .25) of DDR is attributable to services performed by N in M's 2015 taxable year; $50,000 ($200,000 × .25) of DDR is attributable to services performed by N in M's 2016 taxable year; and $100,000 ($200,000 × .50) of DDR is attributable to services performed by N in M's 2017 taxable year.

(iv) The $500,000 deduction limitation for 2015 is applied first to N's $425,000 of AIR for 2015. Because the deduction limit is greater than the AIR, M may deduct the entire $425,000 of AIR paid in 2015. The $500,000 deduction limit is then reduced to $75,000 by the amount of AIR against which it is applied ($500,000 − $425,000). The reduced deduction limit is then applied to N's $50,000 of DDR attributable to services performed by N in M's 2015 taxable year that is paid in 2018. Because $50,000 does not exceed the reduced deduction limit of $75,000, all $50,000 of the DDR attributable to services performed by N in M's 2015 taxable year is deductible for 2018, the year of payment. The deduction limit for remuneration attributable to services performed by N in 2015 is then reduced to $25,000 ($75,000 − $50,000), and this reduced limit is applied to any future payment of DDR attributable to services performed by N in 2015. With respect to M's 2016 taxable year, the $500,000 deduction limit for 2016 is applied first to N's $450,000 of AIR for 2016. Because the deduction limit is greater than the AIR, M may deduct the entire $450,000 of AIR paid in 2016. The $500,000 deduction limit is then reduced to $50,000 by the AIR ($500,000 − $450,000). The reduced deduction limit is then applied to N's $50,000 of DDR attributable to services performed by N in M's 2016 taxable year that is paid in 2018. Because $50,000 does not exceed the reduced deduction limit of $50,000, all $50,000 of the DDR attributed to M's 2016 taxable year is deductible for 2018, the year of payment. The deduction limit for remuneration attributable to services performed by N in 2016 is then reduced to zero, and this reduced limit is applied to any future payment of DDR attributable to services performed by N in 2016. With respect to M's 2017 taxable year, the $500,000 deduction limit for 2017 is applied first to N's $500,000 of AIR for 2017. Because the deduction limit is not greater than the AIR, M may deduct the entire $500,000 of AIR paid in 2017. The $500,000 deduction limit is then reduced to zero by the amount of the AIR against which it is applied ($500,000 − $500,000). The reduced deduction limit is applied to N's $100,000 of DDR attributable to services performed by N in M's 2017 taxable year that is paid in 2018. Because $100,000 exceeds the reduced deduction limit of zero, the $100,000 of the DDR attributed to services performed by N in M's 2017 taxable year is not deductible for the year of payment (or any other taxable year). As a result, $100,000 of the $200,000 payment ($50,000 + $50,000 + $0) is deductible by M for M's 2018 taxable year, and the remaining $100,000 is not deductible by M for any taxable year.

Example 4 (Installment payments and in-service payment attributable to multiple taxable years from an account balance plan using the account balance ratio method). (i) O is an applicable individual of corporation L for all relevant taxable years. On January 1, 2016, O begins participating in a nonqualified deferred compensation plan sponsored by L that is an account balance plan. Under the plan, all amounts are fully vested at all times. L makes contributions to O's account each year and credits earnings based on a predetermined actual investment within the meaning of § 31.3121(v)(2)–1(d)(2)(i)(B). The closing balances in O's account (including contributions, earnings, and distributions made during the year) are $100,000 on December 31, 2016, $250,000 on December 31, 2017, and $50,000 on December 31, 2018. O's AIR from L is $500,000 for 2016, $300,000 for 2017, and $450,000 for 2018. On December 31, 2018, L pays O $400,000 in accordance with the plan terms. On December 31, 2019, O's account balance is $200,000, reflecting additional credits of $125,000 made during the year and earnings on the account. O's AIR from L is $200,000 for 2019. O ceases providing services to L on December 31, 2019. On January 1, 2020, L pays O $200,000 in accordance with the plan terms. L uses the account balance ratio method to attribute amounts to services performed in taxable years.

(ii) To determine the extent to which L is entitled to a deduction for any portion of either of the payments under the plan, O's payments under the plan must first be attributed to services performed by O in L's taxable years in accordance with the attribution rules set forth in paragraph (d) of this section. For purposes of attributing the $400,000 payment made on December 31, 2018 to a taxable year, the increase in O's account balance during 2016 is $100,000 ($100,000 − zero); the increase in O's account balance for 2017 is $150,000 ($250,000 − $100,000); and the increase in O's account balance for 2018 is $200,000 ($50,000 − $250,000 + $400,000 (payment on December 31, 2018)). The sum of all the increases is $450,000 ($100,000 + $150,000 + $200,000). Thus, for L's 2016 taxable year, the attribution fraction is .2222 ($100,000/$450,000); for L's 2017 taxable year, the attribution fraction is .3333 ($150,000/$450,000); and for L's 2018 taxable year, the attribution fraction is .4444 ($200,000/$450,000). Accordingly, with respect to the $400,000 payment made on December 31, 2019, $88,889 ($400,000 × .2222) is attributable to services performed by O in L's 2016 taxable year; $133,333 ($400,000 × .3333) is attributable to services performed by O in L's 2017 taxable year; and $177,778 ($400,000 × .4444) is attributable to services performed by O in L's 2018 taxable year.

(iii) The portion of the $400,000 payment attributed to services performed in a disqualified taxable year under paragraph (d) of this section that exceeds the deduction limit for that disqualified taxable year, as reduced through the date of payment, is not deductible in any taxable year. The $500,000 deduction limit for 2016 is applied first to O's $500,000 of AIR for 2016. Because the deduction limit is equal to the $500,000 of AIR, L may deduct the entire $500,000 of AIR paid in 2016. The $500,000 deduction limit is then reduced to zero by the amount of the AIR ($500,000 − $500,000). The reduced deduction limit is applied to O's $88,889 of DDR attributable to services performed by O in L's 2016 taxable year that is paid in 2018. Because $88,889 exceeds the reduced deduction limit of zero, the $88,889 of DDR attributed to 2016 is not deductible for L's 2018 taxable year or any other taxable year. With respect to L's 2017 taxable year, the $500,000 deduction limitation for 2017 is applied first to O's $300,000 of AIR for 2017. Because the $500,000 deduction limit is greater than the $300,000 of AIR, L may deduct the entire $300,000 of AIR paid in 2017. The $500,000 deduction limit is reduced to $200,000 by the amount of the AIR ($500,000 − $300,000). The reduced deduction limit is then applied to O's $133,333 of DDR attributable to services performed by O in L's 2017 taxable year that is paid in 2018. Because $133,333 does not exceed that reduced deduction limit of $200,000, the $133,333 is deductible for 2018. The deduction limit for remuneration attributable to services performed by O in 2017 is then reduced to $66,667 ($200,000 − $133,333), and this reduced limit is applied to any future payment of DDR attributable to services performed by O in 2017. With respect to L's 2018 taxable year, the $500,000 deduction limit for 2018 is applied first to O's $450,000 of AIR for 2018. Because the deduction limit is greater than the AIR, L may deduct the entire $450,000 of AIR paid in 2017. The $500,000 deduction limit is reduced to $50,000 by the amount of the AIR ($500,000 − $450,000). The reduced deduction limit is applied to O's $177,778 attributable to services performed by O in L's 2018 taxable year that is paid in 2018. Because the $177,778 exceeds the reduced deduction limit of $50,000, $50,000 of DDR

is deductible for L's 2018 taxable year, and $127,778 of the $177,778 is not deductible for L's 2018 taxable year or any other taxable year. As a result, $183,333 of the $400,000 payment ($0 + $133,333 + $50,000) is deductible by L for L's 2018 taxable year, and the remaining $216,667 is not deductible by L for any taxable year.

(iv) For purposes of attributing amounts paid or made available from the plan in future taxable years, the following adjustments are made to O's account balances to reflect the in-service payment of $400,000 in 2018. O's account balance as of December 31, 2016 is reduced by the $88,889 attributable to 2016; and for 2017 is reduced by the sum of the $133,333 attributable to 2017 and the $88,889 attributable to 2016. Therefore, after attributing the $400,000 payment, O's adjusted closing account balance as of December 31, 2016, is $11,111 ($100,000 − $88,889), and as of December 31, 2017, is $27,778 ($250,000 − $133,333 − $88,889).

(v) For purposes of attributing the $200,000 payment made on January 1, 2020, to services performed in the taxable years of S, the increase in O's account balance during 2016 is $11,111 ($11,111 − $0); the increase in O's account balance for 2017 is $16,667 ($27,778 − $11,111); the increase in O's account balance for 2018 is $22,222 ($50,000 − $27,778), and the increase in O's account balance for 2019 is $150,000 ($200,000 − $50,000). The sum of all such increases is $200,000 ($11,111 + $16,667 + $22,222 + $150,000). Thus, for O's 2016 taxable year, the attribution fraction is .0556 ($11,111/$200,000); for O's 2017, taxable year, the attribution fraction is .0833 ($16,667/$200,000); for O's 2018 taxable year, the attribution fraction is .1111 ($22,222/$200,000); for O's 2019 taxable year, the attribution fraction is .7500 ($150,000/$200,000). Accordingly, with respect to the $200,000 payment made on January 1, 2020, $11,111 ($200,000 × .0556) of DDR is attributable to services performed by O in L's 2016 taxable year; $16,667 ($200,000 × .0833) of DDR is attributable to services performed by O in L's 2017 taxable year; $22,222 ($200,000 × .1111) of DDR is attributable to services performed by O in L's 2018 taxable year; and $150,000 ($200,000 × .7500) of DDR is attributable to services performed by O in L's 2019 taxable year.

(vi) The portion of the DDR attributed to a disqualified taxable year under paragraph (d) of this section that exceeds the deduction limit for that disqualified taxable year, as reduced, is not deductible for any taxable year. For L's 2016 taxable year, the deduction limit is reduced to zero by the $500,000 of AIR for that year. Because $11,111 exceeds the reduced deduction limit of zero, $11,111 of the DDR is not deductible for L's 2020 taxable year or any other taxable year. For L's 2017 taxable year, the deduction limit is reduced to $200,000 by the $300,000 of AIR for that year and further reduced to $66,667 by the $133,333 of DDR previously attributed to 2017. Because $16,667 does not exceed the $66,667 deduction limit, the $16,667 of DDR is deductible for L's 2020 taxable year, the year of payment. The deduction limit for remuneration attributable to services performed by O in 2017 is then reduced to $50,000 ($66,667 − $16,667), and this reduced limit is applied to any future payment attributable to services performed by O in 2017. For L's 2018 taxable year, the deduction limit is reduced to zero by the $450,000 of AIR for that year and the $50,000 of DDR previously attributed to 2018. Because $22,222 exceeds the reduced deduction limit of zero for 2018, the $22,222 of DDR is not deductible for L's 2020 taxable year or any other taxable year. For L's 2019 taxable year, the $500,000 deduction limit for 2019 is applied first to O's $200,000 of AIR for 2019. Because the deduction limit is greater than the AIR, L may deduct the entire $200,000 of AIR paid in 2019. The $500,000 deduction limit is reduced to $300,000 by the amount of the AIR ($500,000 − $200,000). The reduced deduction limit is applied to O's $150,000 of DDR attributable to services performed by O in L's 2019 taxable year that is paid in 2020. Because $150,000 does not exceed the $300,000 limit, the $150,000 of DDR is deductible for L's 2020 taxable year, the year of payment. The deduction limit for remuneration attributable to services performed by O in 2019 is then reduced to $150,000 ($500,000 − $200,000 − $150,000), and this reduced limit is applied to any future payment attributable to services performed by O in 2019. As a result, $166,667 of the $200,000 payment ($0 + $16,667 + $0 + $150,000) is deductible by L for L's 2020 taxable year, the year of payment, and the remaining $33,333 is not deductible by L for any taxable year.

Example 5 (Installment payments and in-service payment attributable to multiple taxable years from an account balance plan using the principal additions method). (i) The facts are the same as set forth in *Example 4,* paragraph (i), except that L uses the principal additions method for attributing remuneration from an account balance plan; principal additions under the plan are $100,000 in 2016, $125,000 in 2017, $150,000 in 2018, and $125,000 in 2019; as of the December 31, 2018 initial date of payment, earnings on the 2016, 2017, and 2018 principal additions are $40,000, $30,000, and $5,000 respectively. Under the terms of the plan, the $400,000 payment made on December 31, 2018, is from principal additions in 2016, 2017, and 2018, and earnings thereon, and the $200,000 payment made on January 1, 2020, is from principal additions in 2018 and 2019, and earnings thereon.

(ii) To determine the extent to which L is entitled to a deduction for any portion of either payment under the plan, the payments to O under the plan must first be attributed to services performed by O in F's taxable years in accordance with the attribution rules set forth in paragraph (d) of this section. Under the rules in paragraph (d)(3)(ii) of this section, the $400,000 payment on January 1, 2019, is attributed to services performed by O in the taxable year to which the payment relates under the terms of the plan. DDR including principal additions and earnings thereon are attributed to services performed by O in a taxable year of L when the $400,000 payment is made to O on December 31, 2018. Under the terms of the plan, the $400,000 payment made on December 31, 2018 is attributed to services performed by O in L's 2016 taxable year in the amount of $140,000, and is attributed to services performed by O in L's 2017 taxable year in the amount of $155,000, and the remaining $105,000 ($400,000 − $140,000 − $155,000) is attributed to services performed by O in L's 2018 taxable year.

(iii) The portion of the DDR attributable to services performed in a disqualified taxable year under paragraph (d) of this section that exceeds the deduction limit for that disqualified taxable year, as reduced, is not deductible for any taxable year. The $500,000 deduction limitation for 2016 is applied first to O's $500,000 of AIR for 2016. Because the deduction limit is equal to the $500,000 of AIR, L may deduct the entire $500,000 of AIR paid in 2016. The $500,000 deduction limit is then reduced to zero by the amount of the AIR ($500,000 − $500,000). The reduced deduction limit is applied to O's $140,000 of DDR attributable to services performed by O in L's 2016 taxable year that is paid in 2018. Because $140,000 exceeds the reduced deduction limit of zero, the $140,000 is not deductible for L's 2018 taxable year (the year of payment), or any other taxable year. For L's 2017 taxable year, the $500,000 deduction limit for 2017 is applied first to O's $300,000 of AIR for 2017. Because the deduction limit is greater than the AIR, L may deduct the entire $300,000 of AIR paid in 2017. The $500,000 deduction limit is then reduced to $200,000 by the amount of the AIR ($500,000 − $300,000). The reduced deduction limit is applied to O's $155,000 of DDR attributable to services performed by O in L's 2017 taxable year that is paid in 2018. Because $155,000 does not exceed the reduced deduction limit of $200,000, the $155,000 payment is deductible for 2018. For L's 2018 taxable year, the $500,000 deduction limitation for 2018 is applied first to O's $450,000 of AIR for 2018. Because the deduction limit is greater than the AIR, L may deduct the entire $450,000 of AIR paid in 2018. The $500,000 deduction limit is then reduced to $50,000 by the amount of the AIR ($500,000 − $450,000). The reduced deduction limit is applied to O's $105,000 of DDR attributable to services performed by O in L's 2018 taxable year that is paid in 2018. Because $105,000 exceeds the reduced deduction limit of $50,000, $55,000 of the $105,000 attributable to L's 2018 taxable year is not deductible for 2018 (the year of payment), or any other taxable year. As a result, $205,000 of the $400,000 payment ($0 + $155,000 + $50,000) is deductible by L for L's 2018 taxable year (the year of payment) and the remaining $195,000 is not deductible by L for any taxable year.

(iv) Earnings through January 1, 2020 on the principal addition for L's 2018 taxable year ($50,000) that was not paid as part of the December 31, 2018 payment are $5,000. Earnings through January 1, 2020 on the $125,000 credited to O's account on January 1, 2019 are $20,000. On December 31, 2018, after the $400,000 payment is applied to 2016, 2017, and 2018, the account balance for 2016 and 2017 is reduced to zero, and the account balance for 2018 is reduced to $50,000 ($150,000 + $5,000 (earnings) −

$105,000). Under the terms of the plan, the $200,000 payment made on January 1, 2020, is attributable to services performed by O in L's 2018 and 2019 taxable years. Therefore, the $200,000 payment on January 1, 2020 is attributed to services performed by O in L's taxable years as follows: $55,000 ($50,000 + $5,000) to 2018 and $145,000 ($125,000 + $20,000) to 2019.

(v) The portion of the DDR attributed to a disqualified taxable year under paragraph (d) of this section that exceeds the deduction limit for that disqualified taxable year, as reduced, is not deductible for any taxable year. For L's 2018 taxable year, the deduction limit is reduced to zero by the $450,000 of AIR for that year and the payment of $50,000 of DDR attributable to that year. Because $55,000 exceeds the reduced deduction limit of zero, the $55,000 is not deductible for 2020, the year of payment (or any other taxable year). With respect to L's 2019 taxable year, the $500,000 deduction limit for 2019 is applied first to O's $200,000 of AIR for 2019. Because the deduction limit is greater than the AIR, L may deduct the entire $200,000 of AIR paid in 2019. The $500,000 deduction limit is then reduced to $300,000 by the amount of the AIR ($500,000 − $200,000). The reduced deduction limit is applied to O's $145,000 of DDR attributable to services performed by O in L's 2019 taxable year that is paid in 2020. Because $145,000 does not exceed the $300,000 reduced limit, the $145,000 is deductible for 2020 (the year of payment). As a result, $145,000 of the $200,000 payment ($0 + $145,000) is deductible for L's 2020 taxable year, and the remaining $55,000 is not deductible by L for any taxable year.

(4) *Application of deduction limitation to aggregated groups of covered health insurance providers*—(i) *In general.* The total combined deduction for AIR and DDR attributable to services performed by an applicable individual in a disqualified taxable year allowed for all members of an aggregated group that are covered health insurance providers for any taxable year is limited to $500,000. Therefore, if two or more members of an aggregated group that are covered health insurance providers may otherwise deduct AIR or DDR attributable to services performed by an applicable individual in a disqualified taxable year, the AIR and DDR otherwise deductible by all members of the aggregated group is combined, and the deduction limitation is applied to the total amount.

(ii) *Proration of deduction limitation.* If the total amount of AIR or DDR attributable to services performed by an applicable individual in a disqualified taxable year that is otherwise deductible by two or more members of an aggregated group in any taxable year exceeds the $500,000 deduction limit (as reduced by previously deductible AIR or DDR, if applicable), the deduction limit is prorated based on the AIR or DDR otherwise deductible by the members of the aggregated group in the taxable year and allocated to each member of the aggregated group. The deduction limit allocated to each member of the aggregated group is determined by multiplying the deduction limit for the disqualified taxable year (as previously reduced, if applicable) by a fraction, the numerator of which is the AIR or DDR otherwise deductible by that member in that taxable year that is attributable to services performed by the applicable individual in the disqualified taxable year, and the denominator of which is the total AIR or DDR otherwise deductible by all members of the aggregated group in that taxable year that is attributable to services performed by the applicable individual in the disqualified taxable year. The amount of AIR or DDR otherwise deductible by a member of the aggregated group in excess of the portion of the deduction limit allocated to that member is not deductible in any taxable year. If a covered health insurance provider is a member of more than one aggregated group, the deduction limit for that covered health insurance provider under section 162(m)(6) may in no event exceed $500,000 for AIR and DDR attributable to services performed by an applicable individual in a disqualified taxable year.

(5) *Examples.* The following examples illustrate the rules of paragraph (e)(4) of this section. For purposes of these examples, each corporation has a taxable year that is the calendar year and is a covered health insurance provider for all relevant taxable years, and DDR is otherwise deductible by the covered health insurance provider in the taxable year in which it is paid.

Example 1. (i) Corporations I, J, and K are members of the same aggregated group under paragraph (b)(3) of this section. At separate times during 2016, C is an employee of, and performs services for, I, J, and K. C's total AIR for 2016 is $1,500,000, which consists of $750,000 of AIR for services performed to K; $450,000 of AIR for services provided to J; and $300,000 of AIR for services to I.

(ii) Because I, J, and K are members of the same aggregated group, the AIR otherwise deductible by them is aggregated for purposes of applying the deduction limitation. Further, because the aggregate AIR otherwise deductible by I, J, and K for 2016 exceeds the deduction limitation for C for that taxable year, the deduction limit is prorated and allocated to the members of the aggregated group in proportion to the AIR otherwise deductible by each member of the aggregated group for that taxable year. Therefore, the deduction limit that applies to the AIR otherwise deductible by K is $250,000 ($500,000 × ($750,000/$1,500,000)); the deduction limit that applies to the AIR otherwise deductible by J is $150,000 ($500,000 × ($450,000/$1,500,000)); and the deduction limit that applies to AIR otherwise deductible by I is $100,000 ($500,000 × ($300,000/$1,500,000)). For the 2016 taxable year, K may not deduct $500,000 of the $750,000 of AIR paid to C ($750,000 − $250,000); J may not deduct $300,000 of the $450,000 of AIR paid to C ($450,000 − $150,000); and I may not deduct $200,000 of the $300,000 of AIR paid to C ($300,000 − $100,000).

Example 2. (i) The facts are the same as *Example 1,* except that C's total AIR for 2016 is $400,000, which consists of $75,000 for services provided to K; $150,000 for services provided to J; and $175,000 for services provided to I. In addition, C becomes entitled to $60,000 of DDR attributable to services provided to K in 2016, which is payable (and paid) on April 1, 2018, and $75,000 of DDR attributable to services provided to J in 2016, which is payable (and paid) on April 1, 2019.

(ii) Because C's total AIR of $400,000 for 2016 for services provided to K, J, and I do not exceed the $500,000 limitation, K, J, and I may deduct $75,000, $150,000, and $175,000, respectively, for 2016. The deduction limit is then reduced to $100,000 by the total AIR deductible by all members of the aggregated group ($500,000 − $400,000). The deduction limit, as reduced, is then applied to any DDR attributable to services provided by C in 2016 in the first subsequent taxable year that DDR becomes deductible. The first year that DDR for 2016 becomes deductible is 2018, due to the $60,000 payment made on April 1, 2018. Because the $60,000 of DDR otherwise deductible by K does not exceed the 2016 $100,000 deduction limit, K may deduct the entire $60,000 for its 2018 taxable year. The $100,000 deduction limit is then reduced by the $60,000 of DDR deductible by K for 2018, and the reduced deduction limit of $40,000 ($100,000 − $60,000) is applied to the $75,000 of DDR that is otherwise deductible for 2019. Because the DDR of $75,000 otherwise deductible by J exceeds the reduced deduction limit of $40,000, J may deduct only $40,000, and the remaining $35,000 ($75,000 − $40,000) is not deductible by J for that taxable year or any other taxable year.

Example 3. (i) The facts are the same as *Example 2,* except that C's DDR of $75,000 attributable to services performed by C in J's 2016 taxable year is payable (and paid) on July 1, 2018.

(ii) The results are the same as *Example 2,* except that the reduced deduction limit of $100,000 is prorated between K and J in proportion to the DDR otherwise deductible by them for 2018. Accordingly, $44,444 of the remaining deduction limit is allocated to K ($100,000 × ($60,000/$135,000)), and $55,556 of the remaining deduction limit is allocated to J ($100,000 × ($75,000/$135,000)). Because the $60,000 of DDR otherwise deductible by K exceeds the $44,444 deduction limit applied to that remuneration, K may deduct only $44,444 of the $60,000 payment, and $15,556 may not be deducted by K for the 2018 taxable year or any other taxable year. Similarly, because the $75,000 of DDR otherwise deductible by

J exceeds the $55,556 deduction limit applied to that remuneration, J may deduct only $55,556 of the $75,000 payment, and $19,444 may not be deducted by J for that taxable year or any other taxable year.

(f) *Corporate transactions*—(1) *Treatment as a covered health insurance provider in connection with a corporate transaction.* Except as otherwise provided in this paragraph (f), a person that participates in a corporate transaction is a covered health insurance provider for the taxable year in which the corporate transaction occurs (and any other taxable year) if it would otherwise be a covered health insurance provider under paragraph (b)(4) of this section for that taxable year. For example, if a member of an aggregated group that did not previously include a health insurance issuer purchases a health insurance issuer that is a covered health insurance provider (so that the health insurance issuer becomes a member of the aggregated group), each member of the acquiring aggregated group will be a covered health insurance provider for its full taxable year in which the corporate transaction occurs and each subsequent taxable year in which the health insurance issuer continues to be a member of the group, if it would otherwise be a covered health insurance provider under paragraph (b)(4), except as otherwise provided in this paragraph (f). For purposes of this section, the term *corporate transaction* means a merger, acquisition or disposition of assets or stock, reorganization, consolidation, separation, or any other transaction resulting in a change in the composition of an aggregated group.

(2) *Transition period relief for a person becoming a covered health insurance provider solely as a result of a corporate transaction*—(i) *In general.* Except as provided in paragraph (f)(2)(ii) of this section, a person that is not a covered health insurance provider before a corporate transaction, but would (except for application of this paragraph (f)(2)(i)) become a covered health insurance provider solely because it becomes a member of an aggregated group with another person that is a health insurance issuer as a result of the corporate transaction, is not a covered health insurance provider subject to the deduction limitation of section 162(m)(6) for the taxable year of that person in which the corporate transaction occurs (the *transition period relief*).

(ii) *Certain applicable individuals.* The transition period relief described in paragraph (f)(2)(i) of this section does not apply with respect to the remuneration of any individual who is an applicable individual of a person that would have been a covered health insurance provider for the taxable year in which the corporate transaction occurred without regard to the occurrence of the corporate transaction (for example, the applicable individuals of a health insurance issuer and the members of its affiliated group that were covered health insurance issuers before the occurrence of a corporate transaction). This exception to the transition period relief applies even with respect to remuneration attributable to services performed by the applicable individual for a person that is eligible for the transition period relief described in paragraph (f)(1)(ii)(A) of this section. Accordingly, each member of an acquiring aggregated group that would become a covered health insurance provider solely as a result of a corporate transaction, but is not a covered health insurance provider under the transition period relief described in paragraph (f)(1)(ii)(A) of this section, is subject to the deduction limitation of section 162(m)(6) for its taxable year in which the corporate transaction occurs with respect to AIR and DDR attributable to services performed by any individual who is an applicable individual of the acquired health insurance issuer and any member of its aggregated group that would have been a covered health insurance provider in the taxable year in which the corporate transaction occurred, even if the corporate transaction had not occurred.

(3) *Transition relief from the attribution consistency requirements*—(i) *In general.* Paragraphs (d)(3)(i), (d)(4)(i) and (d)(5)(i)(B) of this section require a covered health insurance provider and all members of its aggregated group to use the same method for attributing remuneration to services performed by applicable individuals consistently for all taxable years (*attribution consistency requirements*). As a result of a corporate transaction, however, a covered health insurance provider that uses an attribution method for its account balance plans, nonaccount balance plans, or stock options or SARs may become a member of an aggregated group with another covered health insurance provider that uses a different attribution method for those types of plans or arrangements. In that case, neither member of the aggregated group will be treated as violating the attribution consistency requirements merely because it uses an attribution method that is different from the attribution method used by another member of its aggregated group to attribute remuneration that becomes otherwise deductible in the taxable year in which the corporate transaction occurs. However, the attribution consistency requirements apply with respect to remuneration that becomes otherwise deductible in all subsequent taxable years. Following the date of the corporate transaction, any member of the aggregated group may change the attribution method that it used before the date of the corporate transaction to attribute remuneration under its account balance plans, nonaccount balance plans, or stock options or SARs to make its method consistent with the method used by any other member of the aggregated group. Notwithstanding the foregoing, the Secretary may subject this change in attribution method to limitations, or may otherwise modify the attribution consistency requirements, pursuant to a notice, revenue ruling, or other guidance of general applicability published in the Internal Revenue Bulletin.

(ii) *Exception for certain applicable individuals.* Notwithstanding the transition relief described in paragraphs (f)(2)(A) of this section, if a covered health insurance provider has attributed remuneration under a method described in paragraphs (d)(3), (d)(4), or (d)(5) of this section with respect to an applicable individual before a corporate transaction, the covered health insurance provider must continue at all times to use that attribution method for all other remuneration that becomes otherwise deductible under the same type of plan (that is, an account balance plan, a nonaccount balance plan, or a stock option or SAR) to which the applicable individual has a legally binding right as of the corporate transaction.

(4) *Deduction limitation not prorated for short taxable years.* If a corporate transaction results in a short taxable year for a covered health insurance provider, the $500,000 deduction limit for the short taxable year is neither prorated nor reduced. For example, if a corporate transaction results in a short taxable year of three months, the deduction limit under section 162(m)(6) for that short taxable year is $500,000 (and is not reduced to $125,000).

(5) *Effect of a corporate transaction on the application of the de minimis exception.* If a person becomes or ceases to be a member of an aggregated group, only the premiums and gross revenues of that person for the portion of its taxable year during which it is a member of the aggregated group are taken into account for purposes of

determining whether the *de minimis* exception applies.

(6) *Examples.* The following examples illustrate the principles of this paragraph (f). For purposes of these examples, each corporation has a taxable year that is the calendar year unless stated otherwise, and none of the corporations qualify for the *de minimis* exception under paragraph (b)(4)(v) of this section.

Example 1. (i) Corporation J merges with and into corporation H on June 30, 2015, such that H is the surviving entity. As a result of the merger, J's taxable year ends on June 30, 2015. For its taxable year ending June 30, 2015, J is a health insurance issuer that is a covered health insurance provider. For all taxable years before the taxable year of the merger, H is not a covered health insurance provider.

(ii) Corporation J is a covered health insurance provider for its short taxable year ending June 30, 2015. As a result of the merger, H becomes a covered health insurance provider for its 2015 taxable year, but Corporation H is not a covered health insurance provider for its 2015 taxable year by reason of the transition period relief in paragraph (f)(1)(ii)(A) of this section. However, applicable individuals of J continue to be subject to the deduction limit under section 162(m)(6) for amounts that become otherwise deductible in the 2015 taxable year and DDR that is attributable to services performed by applicable individuals of J, and H is a covered health insurance provider for all subsequent taxable years for which it is a covered health insurance provider under paragraph (b)(4) of this section.

Example 2. (i) On January 1, 2016, corporations D, E, and F are members of a controlled group within the meaning of section 414(b). F is a health insurance issuer that is a covered health insurance provider under paragraph (b)(4)(i)(A) of this section. D and E are not health insurance issuers (but are covered health insurance providers pursuant to paragraphs (b)(4)(i)(C) and (D) of this section). D is the parent entity of the DEF aggregated group. F's taxable year ends on September 30. P is an applicable individual of F for all taxable years. On May 1, 2016, a controlled group within the meaning of section 414(b) consisting of corporations C and B purchases all of the stock of corporation F, resulting in a controlled group within the meaning of section 414(b) consisting of corporations C, B, and F. The amount of premiums received by F from providing minimum essential coverage during the portion of its taxable year when it was a member of the DEF aggregated group constitute more than two percent of the gross revenues of the aggregated group for the taxable year of D (the parent entity) ending on December 31, 2016, and the taxable years of E and F ending with or within D's taxable year (December 31, 2016 and May 1, 2016 respectively). C and B are not health insurance issuers. C is the parent entity of the CBF aggregated group. The CBF aggregated group is also a consolidated group within the meaning of § 1.1502–1(h). Thus, F's taxable year ends on May 1, 2016 by reason of § 1.1502–76(b)(1)(ii)(A)(*1*), and F becomes part of the CBF consolidated group for the taxable year ending December 31, 2016.

(ii) D and E are covered health insurance providers for the taxable year ending December 31, 2016, and the de minimis exception does not apply because the amount of premiums received by F from providing minimum essential coverage during the short taxable year that it was a member of the DEF aggregated group are more than two percent of the gross revenues of the aggregated group for the taxable years during which the members would otherwise be a covered health insurance providers under paragraph (b)(4)(i) of this section. Accordingly, D and E are subject to the deduction limitation under section 162(m)(6) for their taxable years ending December 31, 2016. C and B are not covered health insurance providers for their taxable year ending December 31, 2016, by reason of the transition period relief of paragraph (f)(1)(ii)(A) of this section.

(iii) As a result of leaving the aggregated group, F has a new taxable year beginning on May 2, 2016 and ending on December 31, 2016. F is a covered health insurance provider within the meaning of paragraph (b)(4) of this section for its new taxable year ending on December 31, 2016 (even though C and B are not covered health insurance providers for their taxable years ending December 31, 2016) unless the CBF aggregated group qualifies for the *de minimis* exception for that taxable year.

(iv) P is an applicable individual whose remuneration from F is subject to the deduction limitation under section 162(m)(6) for F's short taxable year ending May 1, 2016 and F's taxable year ending December 31, 2016. In addition, any remuneration provided to P by C or B at any time for services provided by P from May 1, 2016 to December 31, 2016 is also subject to the deduction limitation under section 162(m)(6), even though C and B are not covered health insurance providers for their taxable years ending December 31, 2016 by reason of the transition period relief of paragraph (f)(1)(ii)(A) of this section. Remuneration to which P had the legally binding right on or before the date of the transaction is subject to the deduction limitation when that remuneration becomes otherwise deductible.

Example 3. (i) The same facts as *Example 2,* except that E is a health insurance issuer that is a covered health insurance provider under paragraph (b)(4) of this section and thus receives premiums from providing minimum essential coverage (instead of F), and F is not a health insurance issuer.

(ii) F is a covered health insurance provider for its short taxable year ending May 1, 2016. However, because F is not a health insurance issuer that is a covered health insurance provider and there are no other health insurance issuers in the BCF aggregated group, F is not a covered health insurance provider for its short, post-acquisition taxable year ending December 31, 2016.

(iii) With respect to P, remuneration to which P had the legally binding right on or before the date of the transaction is subject to the deduction limitation. However, remuneration to which P obtains the legally binding right after the date of the corporate transaction is not subject to the deduction limitation.

Example 4. (i) Corporations N, O, and P are members of an aggregated group as described in paragraph (b)(2) of this section. N is a health insurance issuer that is a covered health insurance provider pursuant to paragraph (b)(4)(i)(A) of this section, but neither O nor P is a health insurance issuer. P is the parent entity of the aggregated group. On April 1, 2016, O ceases to be a member of the NOP aggregated group as the result of a corporate transaction. O's taxable year does not end as a result of the corporate transaction.

(ii) Because O was a member of the NOP aggregated group during a portion of its taxable year, O is a covered health insurance provider for its taxable year ending December 31, 2016.

Example 5. (i) Corporations V, W, and X are members of an aggregated group as described in paragraph (b)(2) of this section. V is a health insurance issuer that is a covered health insurance provider pursuant to paragraph (b)(4)(i)(A) of this section, but neither W nor X is a health insurance issuer. W is the parent entity of the aggregated group. V's taxable year ends on December 31; W's taxable year ends on June 30; and X's taxable year ends on September 30. For its taxable year ending June 30, 2017, W has $100x in gross revenue. For its taxable year ending September 30, 2016, X has $60x in gross revenue. For its taxable year ending December 31, 2016, V receives $4x of premiums from providing minimum essential coverage and has no other revenue. As of September 30, 2016, V ceases to be a member of the VWX aggregated group. V's taxable year does not end on September 30, 2016 as a result of the transaction. Of the $4x that that V receives for providing minimum essential coverage during its taxable year ending December 31, 2016, $3x is received during the period from January 1, 2016 through September 30, 2016. As a result of the corporate transaction, V's taxable year ends on September 30, 2016. The *de minimis* exception of paragraph (b)(4)(v)(A) of this section did not apply to the members of the VWX aggregated group for their immediately preceding taxable years ending December 31, 2015, June 30, 2016, and September 30, 2015, respectively.

(ii) For purposes of applying the *de minimis* exception to an aggregated group for a taxable year during which a person leaves or joins the aggregated group, only the premiums and revenues of the person for the portion of its taxable year during which it was a member of the aggregated group are taken into account. The premiums from providing minimum essential coverage received by the VWX aggregated group for W's taxable year ending June 30, 2017 are $3x. The revenues of the V, W, and X aggregated group for W's taxable year ending June 30, 2017 are $163x. Accordingly, the premiums received by the members of the aggregated group from providing minimum essential coverage are less than two percent of the gross revenues of the aggregated group

($3x is less than $3.26x (two percent of $163x)). Therefore, V, W and X are not covered health insurance providers for their taxable years ending December 31, 2016, June 30, 2017, and September 30, 2016, respectively.

Example 6. (i) The facts are the same as *Example 5,* except that F received $4x of premiums during the period from January 1, 2016 to September 30, 2016, and the members of the VWX aggregated group were not covered health insurance providers for their taxable years ending December 31, 2015, June 30, 2016, and September 30, 2015, respectively (their immediately preceding taxable years) solely by reason of the *de minimis* exception of paragraph (b)(4)(v)(A) of this section.

(ii) The premiums from providing minimum essential coverage received by the VWX aggregated group for W's taxable year ending June 30, 2017 are $4x. The revenues of the VWX aggregated group for W's taxable year ending June 30, 2017 are $164x. Accordingly, the premiums received by the members of the aggregated group from providing minimum essential coverage are greater than two percent of the gross revenues of the aggregated group ($4x is greater than $3.28x (two percent of $164x)). Therefore, V, W, and X do not qualify for the *de minimis* exception for their taxable years ending December 31, 2016, June 30, 2017, and September 30, 2016, respectively. However, V, W, and X are not covered health insurance providers for these taxable years by reason of the *de minimis* exception one year transition period described in paragraph (b)(4)(v)(B) of this section.

Example 7. (i) Corporation N is a health insurance issuer that is a covered health insurance provider. Corporation O is also a health insurance issuer that is a covered health insurance provider. Both N and O have taxable years ending December 31. N uses the account balance ratio method to attribute remuneration that becomes otherwise deductible under its account balance plans. O uses the principal additions method to attribute amounts that become otherwise deductible under its account balance plans. On June 30, 2016, O purchases all of the stock of N.

(ii) For the taxable year of N and O ending December 31, 2016, N may continue to attribute amounts that become deductible under its account balance plans using the account balance ratio method, and O can continue to attribute amounts that become otherwise deductible under its account balance plan using the principal additions method, even though they are members of the same aggregated group, pursuant to the transition period relief described in paragraph (f)(2) of this section. In all subsequent taxable years, N and O must use the same method to attribute amounts that become otherwise deductible under their account balance plans. Either N or O may change the method that it uses to attribute amounts under its account balance plans to be consistent with the attribution method used by the other.

Example 8. (i) The facts are the same as *Example 7.* In addition, B is an applicable individual of N before the corporate transaction and is a participant in an account balance plan of N. On December 31, 2015, N made a payment to B, and N used the account balance ratio method described in paragraph (d)(3)(ii) of this section to attribute the payment to services performed by B in taxable years of N.

(ii) Because N used the account balance ratio method described in paragraph (d)(3)(ii) of this section to attribute an amount that became otherwise deductible under the plan before the corporate transaction, N must continue to use the account balance ratio method for attributing amounts to which B had a legally binding right as of the corporate transaction, whenever those amounts become otherwise deductible.

(g) *Coordination*—(1) *Coordination with section 162(m)(1).* If section 162(m)(1) and section 162(m)(6) both otherwise would apply with respect to the remuneration of an applicable individual, the deduction limitation under section 162(m)(6) applies without regard to section 162(m)(1). For example, if an applicable individual is both a covered employee of a publicly held corporation (see sections 162(m)(2) and (3); § 1.162–27) and an applicable individual within the meaning of paragraph (b)(7) of this section, remuneration earned by the applicable individual that is attributable to a disqualified taxable year of a covered health insurance provider is subject to the $500,000 deduction limitation under section 162(m)(6) with respect to such disqualified taxable year, without regard to section 162(m)(1).

(2) *Coordination with disallowed excess parachute payments*—(i) *In general.* The $500,000 deduction limitation of section 162(m)(6) is reduced (but not below zero) by the amount (if any) that would have been included in the AIR or DDR of the applicable individual for a taxable year but for the deduction for the AIR or DDR being disallowed by reason of section 280G.

(ii) *Example.* The following example illustrates the rule of this paragraph (g)(2).

Example. Corporation A, a covered health insurance provider, pays $750,000 of AIR to P, an applicable individual, during A's disqualified taxable year ending December 31, 2016. Of the $750,000, $300,000 is an excess parachute payment as defined in section 280G(b)(1), the deduction for which is disallowed by reason of that section. The excess parachute payment reduces the $500,000 deduction limit to $200,000 ($500,000 − $300,000). Therefore, A may deduct only $200,000 of the $750,000 in AIR, and $250,000 of the payment is not deductible by reason of section 162(m)(6).

(h) *Grandfathered amounts attributable to services performed in taxable years beginning before January 1, 2010*—(1) *In general.* The section 162(m)(6) deduction limitation does not apply to remuneration attributable to services performed in taxable years of a covered health insurance provider beginning before January 1, 2010 (*grandfathered amounts*). For purposes of this paragraph (h), whether remuneration is attributable to services performed in a taxable year beginning before January 1, 2010, is determined by applying an attribution method described in paragraph (h)(2) of this section.

(2) *Identification of services performed in taxable years beginning before January 1, 2010*—(i) *In general.* DDR described in paragraphs (d)(2) (legally binding right), (d)(3) (account balance plans), (d)(4) (nonaccount balance plans), (d)(6) (involuntary separation pay), (d)(7) (reimbursements), and (d)(8) (split dollar life insurance) of this section is attributable to services performed in a taxable year beginning before January 1, 2010 if it is attributable to services performed before that date under the rules of these paragraphs, without regard to whether that remuneration is subject to a substantial risk of forfeiture on or after that date. Notwithstanding the requirement under paragraph (d)(3)(i) of this section that a covered health insurance provider must use the same attribution method for its account balance plans for all taxable years, a covered health insurance provider that uses the account balance ratio method described in paragraph (d)(3)(i) of this section to attribute remuneration to services performed in taxable years beginning after December 31, 2009 may use the principal additions method described in paragraph (d)(3)(ii) of this section to attribute remuneration under an account balance plan to services performed in a taxable year beginning before January 1, 2010 for purposes of determining grandfathered amounts under the plan. (See paragraph (d)(3)(ii)(C)(*3*) of this section for required account balance adjustments if a covered health insurance provider generally uses the account balance ratio method to attribute amounts otherwise deductible under its account balance plans but uses the principal additions method to attribute remuneration to services performed in taxable years beginning before January 1, 2010.)

(ii) *Equity-based remuneration.* For purposes of this section, all remuneration resulting from a stock option, stock appreciation right, restricted stock, or restricted stock unit

and the right to any associated dividends or dividend equivalents (together, referred to as *equity-based remuneration*) granted before the first day of the taxable year of the covered health insurance provider beginning on or after January 1, 2010, is attributable to services performed in taxable years beginning before January 1, 2010, regardless of the date on which the equity-based remuneration is exercised (in the case of a stock option or SAR), the date on which the amounts due under the equity-based remuneration are paid or includible in income, or whether the equity-based remuneration is subject to a substantial risk of forfeiture on or after the first day of the taxable year of the covered health insurance provider beginning on or after January 1, 2010. For example, appreciation in the value of restricted shares granted before the first day of the taxable year beginning on or after January 1, 2010 is treated as remuneration that is attributable to services performed in taxable years beginning before January 1, 2010, regardless of whether the shares are vested at that time.

(i) *Transition rules for certain DDR*—(1) *Transition rule for DDR attributable to services performed in taxable years of the covered health insurance provider beginning after December 31, 2009 and before January 1, 2013.* The deduction limitation under section 162(m)(6) applies to DDR attributable to services performed in a disqualified taxable year of a covered health insurance provider beginning after December 31, 2009 and before January 1, 2013, only if that remuneration is otherwise deductible in a disqualified taxable year of the covered health insurance provider beginning after December 31, 2012. However, if the deduction limitation applies to DDR attributable to services performed by an applicable individual in a disqualified taxable year of a covered health insurance provider beginning after December 31, 2009 and before January 1, 2013, the deduction limitation is calculated as if it had been applied to the applicable individual's AIR and DDR deductible in those taxable years.

(2) *Examples.* The following examples illustrate the principles of this paragraph (i). For purposes of these examples, each corporation has a taxable year that is the calendar year, and DDR is otherwise deductible by the covered health insurance provider in the taxable year in which it is paid.

Example 1. (i) Q is an applicable individual of corporation Z. Z's 2010, 2011, and 2012 taxable years are disqualified taxable years. Z's 2013, 2014, and 2015 taxable years are not disqualified taxable years. However, Z's 2016 taxable year and all subsequent taxable years are disqualified taxable years. Q receives $200,000 of AIR from Z for 2012, and becomes entitled to $800,000 of DDR that is attributable to services performed by Q in 2012. Z pays Q $350,000 of the DDR in 2015, and the remaining $450,000 of the DDR in 2016. These payments are otherwise deductible by Z in 2015 and 2016, respectively.

(ii) DDR attributable to services performed by Q in Z's 2010, 2011, and 2012 taxable years that is otherwise deductible in Z's 2013, 2014, or 2015 taxable years is not subject to the deduction limitation under section 162(m)(6) by reason of the transition rule under paragraph (i)(1) of this section. However, DDR attributable to services performed in Z's 2010, 2011, and 2012 taxable years that is otherwise deductible in a later taxable year that is a disqualified taxable year (in this case, Z's 2016 and subsequent taxable years) is subject to the deduction limitation under section 162(m)(6). Accordingly, the deduction limitation with respect to AIR and DDR attributable to services performed by Q in 2012 is determined by reducing the $500,000 deduction limit by the $200,000 of AIR paid to Q by Z for 2012 ($500,000 − $200,000). Under the transition rule of paragraph (i)(1) of this section, no portion of the reduced deduction limit of $300,000 for the 2012 taxable year is applied against the $350,000 payment made in 2015, and accordingly, the deduction limit is not reduced by the amount of that payment. The reduced deduction limit is then applied to Q's $450,000 of DDR attributable to services performed by Q in 2012 that is paid to Q and becomes otherwise deductible in 2016. Because the reduced deduction limit of $300,000 is less than the $450,000 otherwise deductible by Z in 2016, Z may deduct only $300,000 of the DDR, and $150,000 of the $450,000 payment is not deductible by Z in that taxable year or any taxable year.

Example 2. (i) R is an applicable individual of corporation Y, which is a covered health insurance provider for all relevant taxable years. During 2010, Y pays R $400,000 in salary and grants R a right to $200,000 in DDR payable on a fixed schedule in 2011, 2012, and 2013. Pursuant to the fixed schedule, Y pays R $50,000 of DDR in 2011, $50,000 of DDR in 2012, and the remaining $100,000 of DDR in 2013.

(ii) Because the deduction limitation for DDR under section 162(m)(6)(A)(ii) is effective for DDR that is attributable to services performed by an applicable individual during any disqualified taxable year beginning after December 31, 2009 that would otherwise be deductible in a taxable year beginning after December 31, 2012, only the DDR paid by Y in 2013 is subject to the deduction limitation. However, the limitation is applied as if section 162(m)(6) and paragraph (c)(2) of this section were effective for taxable years beginning after December 31, 2009 and before January 1, 2013. Accordingly, the deduction limitation with respect to remuneration for services performed by R in 2010 is determined by reducing the $500,000 deduction limit by the $400,000 of AIR paid to R for 2010 ($500,000 −$400,000). The reduced deduction limit of $100,000 is further reduced to zero by the $50,000 of DDR attributable to services performed by R in Y's 2010 taxable year that is deductible in each of 2011 and 2012 (($100,000 − $50,000 − $50,000). Because the deduction limit is reduced to zero, none of the $100,000 of DDR attributable to services performed by R in Y's 2010 taxable year and paid to R in 2013 is deductible.

(j) *Effective/applicability dates.* These regulations are effective on September 23, 2014. The regulations apply to taxable years beginning on or after September 23, 2014.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: September 15, 2014.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

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Part IV

The President

Proclamation 9169—National POW/MIA Recognition Day, 2014
Executive Order 13676—Combating Antibiotic-Resistant Bacteria

Federal Register
Vol. 79, No. 184
Tuesday, September 23, 2014

Presidential Documents

Title 3—

The President

Proclamation 9169 of September 18, 2014

National POW/MIA Recognition Day, 2014

By the President of the United States of America

A Proclamation

America's history shines with patriots who have answered the call to serve. From Minutemen who gathered on a green in Lexington to a great generation that faced down Communism and all those in our military today, their sacrifices have strengthened our Nation and helped secure more than two centuries of freedom. As our Armed Forces defend our homeland from new threats in a changing world, we remain committed to a profound obligation that dates back to the earliest days of our founding—the United States does not ever leave our men and women in uniform behind. On National POW/MIA Recognition Day, we express the solemn promise of a country and its people to our service members who have not returned home and their families: you are not forgotten.

My Administration remains dedicated to accounting as fully as possible for our Nation's missing heroes, lost on battlefields where the sounds of war ceased decades ago and in countries where our troops are deployed today. Whether they are gone for a day or for decades, their absence is felt. They are missed during holidays and around dinner tables, and their loved ones bear this burden without closure. Americans who gave their last full measure of devotion deserve to be buried with honor and dignity, and those who are still unaccounted for must be returned to their families. We will never give up our search for them, and we will continue our work to secure the release of our citizens who are unjustly detained abroad. Today, we acknowledge that we owe a profound debt of gratitude to all those who have given of themselves to protect our Union and our way of life, and we honor them by working to uphold this sacred trust.

On September 19, 2014, the stark black and white banner symbolizing America's Missing in Action and Prisoners of War will be flown over the White House; the United States Capitol; the Departments of State, Defense, and Veterans Affairs; the Selective Service System Headquarters; the World War II Memorial; the Korean War Veterans Memorial; the Vietnam Veterans Memorial; United States post offices; national cemeteries; and other locations across our country. We raise this flag as a solemn reminder of our obligation to always remember the sacrifices made to defend our Nation.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 19, 2014, as National POW/MIA Recognition Day. I urge all Americans to observe this day of honor and remembrance with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of September, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

[FR Doc. 2014–22804
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Presidential Documents

Executive Order 13676 of September 18, 2014

Combating Antibiotic-Resistant Bacteria

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby order as follows:

Section 1. *Policy.* The discovery of antibiotics in the early 20th century fundamentally transformed human and veterinary medicine. Antibiotics save millions of lives each year in the United States and around the world. The rise of antibiotic-resistant bacteria, however, represents a serious threat to public health and the economy. The Centers for Disease Control and Prevention (CDC) in the Department of Health and Human Services (HHS) estimates that annually at least two million illnesses and 23,000 deaths are caused by antibiotic-resistant bacteria in the United States alone.

Detecting, preventing, and controlling antibiotic resistance requires a strategic, coordinated, and sustained effort. It also depends on the engagement of governments, academia, industry, healthcare providers, the general public, and the agricultural community, as well as international partners. Success in this effort will require significant efforts to: minimize the emergence of antibiotic-resistant bacteria; preserve the efficacy of new and existing antibacterial drugs; advance research to develop improved methods for combating antibiotic resistance and conducting antibiotic stewardship; strengthen surveillance efforts in public health and agriculture; develop and promote the use of new, rapid diagnostic technologies; accelerate scientific research and facilitate the development of new antibacterial drugs, vaccines, diagnostics, and other novel therapeutics; maximize the dissemination of the most up-to-date information on the appropriate and proper use of antibiotics to the general public and healthcare providers; work with the pharmaceutical industry to include information on the proper use of over-the-counter and prescription antibiotic medications for humans and animals; and improve international collaboration and capabilities for prevention, surveillance, stewardship, basic research, and drug and diagnostics development.

The Federal Government will work domestically and internationally to detect, prevent, and control illness and death related to antibiotic-resistant infections by implementing measures that reduce the emergence and spread of antibiotic-resistant bacteria and help ensure the continued availability of effective therapeutics for the treatment of bacterial infections.

Sec. 2. *Oversight and Coordination.* Combating antibiotic-resistant bacteria is a national security priority. The National Security Council staff, in collaboration with the Office of Science and Technology Policy, the Domestic Policy Council, and the Office of Management and Budget, shall coordinate the development and implementation of Federal Government policies to combat antibiotic-resistant bacteria, including the activities, reports, and recommendations of the Task Force for Combating Antibiotic-Resistant Bacteria established in section 3 of this order.

Sec. 3. *Task Force for Combating Antibiotic-Resistant Bacteria.* There is hereby established the Task Force for Combating Antibiotic-Resistant Bacteria (Task Force), to be co-chaired by the Secretaries of Defense, Agriculture, and HHS.

(a) Membership. In addition to the Co-Chairs, the Task Force shall consist of representatives from:

(i) the Department of State;

(ii) the Department of Justice;

(iii) the Department of Veterans Affairs;

(iv) the Department of Homeland Security;

(v) the Environmental Protection Agency;

(vi) the United States Agency for International Development;

(vii) the Office of Management and Budget;

(viii) the Domestic Policy Council;

(ix) the National Security Council staff;

(x) the Office of Science and Technology Policy;

(xi) the National Science Foundation; and

(xii) such executive departments, agencies, or offices as the Co-Chairs may designate.

Each executive department, agency, or office represented on the Task Force (Task Force agency) shall designate an employee of the Federal Government to perform the functions of the Task Force. In performing its functions, the Task Force may make use of existing interagency task forces on antibiotic resistance.

(b) *Mission.* The Task Force shall identify actions that will provide for the facilitation and monitoring of implementation of this order and the National Strategy for Combating Antibiotic-Resistant Bacteria (Strategy).

(c) *Functions.*

(i) By February 15, 2015, the Task Force shall submit a 5-year National Action Plan (Action Plan) to the President that outlines specific actions to be taken to implement the Strategy. The Action Plan shall include goals, milestones, and metrics for measuring progress, as well as associated timelines for implementation. The Action Plan shall address recommendations made by the President's Council of Advisors on Science and Technology regarding combating antibiotic resistance.

(ii) Within 180 days of the release of the Action Plan and each year thereafter, the Task Force shall provide the President with an update on Federal Government actions to combat antibiotic resistance consistent with this order, including progress made in implementing the Strategy and Action Plan, plans for addressing any barriers preventing full implementation of the Strategy and Action Plan, and recommendations for new or modified actions. Annual updates shall include specific goals, milestones, and metrics for all proposed actions and recommendations. The Task Force shall take Federal Government resources into consideration when developing these proposed actions and recommendations.

(iii) In performing its functions, the Task Force shall review relevant statutes, regulations, policies, and programs, and shall consult with relevant domestic and international organizations and experts, as necessary.

(iv) The Task Force shall conduct an assessment of progress made towards achieving the milestones and goals outlined in the Strategy in conjunction with the Advisory Council established pursuant to section 4 of this order.

Sec. 4. *Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria.* (a) The Secretary of HHS (Secretary), in consultation with the Secretaries of Defense and Agriculture, shall establish the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria (Advisory Council). The Advisory Council shall be composed of not more than 30 members to be appointed or designated by the Secretary.

(b) The Secretary shall designate a chairperson from among the members of the Advisory Council.

(c) The Advisory Council shall provide advice, information, and recommendations to the Secretary regarding programs and policies intended to: preserve the effectiveness of antibiotics by optimizing their use; advance

research to develop improved methods for combating antibiotic resistance and conducting antibiotic stewardship; strengthen surveillance of antibiotic-resistant bacterial infections; prevent the transmission of antibiotic-resistant bacterial infections; advance the development of rapid point-of-care and agricultural diagnostics; further research on new treatments for bacterial infections; develop alternatives to antibiotics for agricultural purposes; maximize the dissemination of up-to-date information on the appropriate and proper use of antibiotics to the general public and human and animal healthcare providers; and improve international coordination of efforts to combat antibiotic resistance. The Secretary shall provide the President with all written reports created by the Advisory Council.

(d) Task Force agencies shall, to the extent permitted by law, provide the Advisory Council with such information as it may require for purposes of carrying out its functions.

(e) To the extent permitted by law, and subject to the availability of appropriations, HHS shall provide the Advisory Council with such funds and support as may be necessary for the performance of its functions.

Sec. 5. *Improved Antibiotic Stewardship.* (a) By the end of calendar year 2016, HHS shall review existing regulations and propose new regulations or other actions, as appropriate, that require hospitals and other inpatient healthcare delivery facilities to implement robust antibiotic stewardship programs that adhere to best practices, such as those identified by the CDC. HHS shall also take steps to encourage other healthcare facilities, such as ambulatory surgery centers and dialysis facilities, to adopt antibiotic stewardship programs.

(b) Task Force agencies shall, as appropriate, define, promulgate, and implement stewardship programs in other healthcare settings, including office-based practices, outpatient settings, emergency departments, and institutional and long-term care facilities such as nursing homes, pharmacies, and correctional facilities.

(c) By the end of calendar year 2016, the Department of Defense (DoD) and the Department of Veterans Affairs (VA) shall review their existing regulations and, as appropriate, propose new regulations and other actions that require their hospitals and long-term care facilities to implement robust antibiotic stewardship programs that adhere to best practices, such as those defined by the CDC. DoD and the VA shall also take steps to encourage their other healthcare facilities, such as ambulatory surgery centers and outpatient clinics, to adopt antibiotic stewardship programs.

(d) Task Force agencies shall, as appropriate, monitor improvements in antibiotic use through the National Healthcare Safety Network and other systems.

(e) The Food and Drug Administration (FDA) in HHS, in coordination with the Department of Agriculture (USDA), shall continue taking steps to eliminate the use of medically important classes of antibiotics for growth promotion purposes in food-producing animals.

(f) USDA, the Environmental Protection Agency (EPA), and FDA shall strengthen coordination in common program areas, such as surveillance of antibiotic use and resistance patterns in food-producing animals, interspecies disease transmissibility, and research findings.

(g) DoD, HHS, and the VA shall review existing regulations and propose new regulations and other actions, as appropriate, to standardize the collection and sharing of antibiotic resistance data across all their healthcare settings.

Sec. 6. *Strengthening National Surveillance Efforts for Resistant Bacteria.* (a) The Task Force shall ensure that the Action Plan includes procedures for creating and integrating surveillance systems and laboratory networks to provide timely, high-quality data across healthcare and agricultural settings, including detailed genomic and other information, adequate to track resistant bacteria across diverse settings. The network-integrated surveillance

systems and laboratory networks shall include common information requirements, repositories for bacteria isolates and other samples, a curated genomic database, rules for access to samples and scientific data, standards for electronic health record-based reporting, data transparency, budget coordination, and international coordination.

(b) Task Force agencies shall, as appropriate, link data from Federal Government sample isolate repositories for bacteria strains to an integrated surveillance system, and, where feasible, the repositories shall enhance their sample collections and further interoperable data systems with national surveillance efforts.

(c) USDA, EPA, and FDA shall work together with stakeholders to monitor and report on changes in antibiotic use in agriculture and their impact on the environment.

(d) Task Force agencies shall, as appropriate, monitor antibiotic resistance in healthcare settings through the National Healthcare Safety Network and related systems.

Sec. 7. *Preventing and Responding to Infections and Outbreaks with Antibiotic-Resistant Organisms.* (a) Task Force agencies shall, as appropriate, utilize the enhanced surveillance activities described in section 6 of this order to prevent antibiotic-resistant infections by: actively identifying and responding to antibiotic-resistant outbreaks; preventing outbreaks and transmission of antibiotic-resistant infections in healthcare, community, and agricultural settings through early detection and tracking of resistant organisms; and identifying and evaluating additional strategies in the healthcare and community settings for the effective prevention and control of antibiotic-resistant infections.

(b) Task Force agencies shall take steps to implement the measures and achieve the milestones outlined in the Strategy and Action Plan.

(c) DoD, HHS, and the VA shall review and, as appropriate, update their hospital and long-term care infectious disease protocols for identifying, isolating, and treating antibiotic-resistant bacterial infection cases.

Sec. 8. *Promoting New and Next Generation Antibiotics and Diagnostics.* (a) As part of the Action Plan, the Task Force shall describe steps that agencies can take to encourage the development of new and next-generation antibacterial drugs, diagnostics, vaccines, and novel therapeutics for both the public and agricultural sectors, including steps to develop infrastructure for clinical trials and options for attracting greater private investment in the development of new antibiotics and rapid point-of-care diagnostics. Task Force agency efforts shall focus on addressing areas of unmet medical need for individuals, including those antibiotic-resistant bacteria CDC has identified as public and agricultural health threats.

(b) Together with the countermeasures it develops for biodefense threats, the Biomedical Advanced Research Development Authority in HHS shall develop new and next-generation countermeasures that target antibiotic-resistant bacteria that present a serious or urgent threat to public health.

(c) The Public Health Emergency Medical Countermeasures Enterprise in HHS shall, as appropriate, coordinate with Task Force agencies' efforts to promote new and next-generation countermeasures to target antibiotic-resistant bacteria that present a serious or urgent threat to public health.

Sec. 9. *International Cooperation.* Within 30 days of the date of this order, the Secretaries of State, USDA, and HHS shall designate representatives to engage in international action to combat antibiotic-resistant bacteria, including the development of the World Health Organization (WHO) Global Action Plan for Antimicrobial Resistance with the WHO, Member States, and other relevant organizations. The Secretaries of State, USDA, and HHS shall conduct a review of international collaboration activities and partnerships, and identify and pursue opportunities for enhanced prevention, surveillance, research and development, and policy engagement. All Task Force

agencies with research and development activities related to antibiotic resistance shall, as appropriate, expand existing bilateral and multilateral scientific cooperation and research pursuant to the Action Plan.

Sec. 10. *General Provisions.* (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (the ''Act''), may apply to the Advisory Council, any functions of the President under the Act, except for that of reporting to the Congress, shall be performed by the Secretary in accordance with the guidelines issued by the Administrator of General Services.

THE WHITE HOUSE,
September 18, 2014.

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